15-9-66

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 133.

THE TEXAS AND PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

ROBERT N. SMITH, ELIZABETH A. SMITH, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

FILED APRIL 20, 1891.

(14,586.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 29, 1894.

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a United States Circuit Court, 5th Circuit, Western District of Louisiana.

R. N. SMITH *et al.*
vs.
JOHN C. BROWN, Receiver, *et al.* } No. 99.

Transcript of Record.

For plaintiffs, Mess. A. H. Leonard & A. D. Land.
" defendants, Mess. Wise & Herndon.

1 *Petition.*

To the honorable the judges of the circuit court of the United States, fifth circuit and western district of Louisiana, at the city of Shreveport:

The petition of Robert N. Smith and of Elizabeth A. Smith, wife of Marine Duvall, herein joined, authorized and assisted by her said husband, and of William L. Smith and of Elizabeth W. Smith, widow of the late James F. Smith, deceased, all residents and citizens of Shelby county & State of Kentucky, and of John S. Smith, a resident and citizen of Denver & State of Colorado, with respect represents—

That petitioners are the only legal heirs of William W. Smith, deceased, late of the parish of Caddo and State of Louisiana, and have accepted his succession unconditionally and have succeeded to all his rights, property, & credits in the State of Louisiana.

Petitioners further represent that the said William W. Smith died on the 14 day of May, 1853; did purchase from the State of Louisiana, through its constituted authorities, a certain tract of land known as "Cross Lake," situated in section 25, township 18, range 14 west, in the said parish of Caddo, containing 21.18 acres, more or less, and more particularly described in the plat and *filed*-notes hereto annexed and made part hereof, at the maximum price of $1.25 per acre, which at the time was paid into the treasury of said State by said W. W. Smith, as is shown by transcript of original entry & certificate hereto annexed & made part of this petition.

2

Petitioners further show that the State of Louisiana acquired the ownership of said tract of land, which was swamp & overflowed land, under the acts of Congress approved March 2nd, 1849, and September 28th, 1850, by express grant *in presenti* from the United States, and that the said State sold said tract to said Smith on May 14th, 1853, as swamp & overflowed lands granted to said State under said acts.

Petitioners further show that said sale was confirmed by the United States by acts of Congress of date March 2d, 1855, and March 3d, 1857, passed as statutes of repose, for the relief of purchasers & locators on lands claimed by the State as swamp and overflowed.

3 Wherefore petitioners aver that the said Wm. W. Smith was the legal owner of said tract of land at the time of his death, and the legal title to same has been vested in your petitioners by inheritance & succession.

Petitioners further show that about the year 1881 the New Orleans & Pacific Railroad Company, a corporation created by the laws of Louisiana, illegally & wrongfully took possession of said tract of land sometimes called lot 15, in sec. 25, T. 18, R. 14 W., situate within the limits of the city of Shreveport, and said possession continued until said company was consolidated with the Texas & Pacific Railroad Company, in the year 18—, and said consolidated companies continued to unlawfully possess the said tract of land until the — day of ——, 1885, when their possession was transferred to John C. Brown and Lionel A. Sheldon, receivers appointed to take charge of all the property, &c., of said Texas & Pacific Railroad Co. by decree of this honorable circuit court rendered at New Orleans, eastern district of La., in the case entitled Missouri Pacific Railroad Co. *vs.* Texas & Pacific Railroad Co.

4 Petitioners show that said receivers are now in possession of said tract of land through their agents & employees.

Petitioners further show that said tract of land is worth at least one thousand dollars and that this honorable court has jurisdiction of the case herein presented.

And they further represent that said receivers and said consolidated railroad company are citizens of the State of Louisiana or of States other than Kentucky and Colorado.

Petitioners further show that said receivers being in actual possession and control of said tract of land, it is necessary that they should be made parties defendant to this suit.

Wherefore petitioners pray the court to grant their permission to institute this suit against said receivers as officers of this court in possession of the property in dispute; and, this permission having been first obtained, petitioners pray for citation to said John C. Brown and Lionel A. Sheldon, receivers of the Texas & Pacific Railroad Co., and, after due proceedings had, for judgment decreeing petitioners to be the lawful owners of said tract of land and ordering them to be put in possession of the same, and also for

5 rents and revenues from judicial demand.

Petitioners further pray for all orders, decrees, & writs necessary in the premises, for general relief and costs of suit.

A. H. LEONARD,
LAND & LAND,
Att'ys for Plaintiffs.

Order.

Authority is given to institute the said suit. The receivers, when notified, will defend for themselves and the Texas & Pacific Railway Co.

April 28th, 1886.

DON A. PARDEE, *Judge.*

Endorsed: No. 99. U. S. circuit court, western district of La. R. N. Smith *et als. vs.* Jno. C. Brown & L. A. Sheldon, receivers, &c. Petition. Filed May 1st, 1886. E. J. Nolan, dy clerk.

6 *Citation.*

THE UNITED STATES OF AMERICA, }
Western District of Louisiana. }

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

R. N. SMITH *et al.*
vs.
JNO. C. BROWN & L. A. SHELDON, Receivers, &c. } No. 99.

To John C. Brown & L. A. Sheldon, receivers of Texas & Pacific railway, New Orleans, La.:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and western district of Louisiana, in the city of Shreveport, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from Shreveport, the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Shreveport, this 3rd day of May, A. D. one thousand eight
7 hundred and eighty-six, and of the Independence of the United States of America the 110th year.

J. W. WHEATON, *Clerk.*

Teste:

Marshal's Returns on Citation.

Received May 5th, 1886, by the U. S. marshal, and on the 10 day of May, 1886, I served a true copy of the within citation and accompanying plaintiff's petition on L. A. Sheldon, defendant herein, by handing the same to him in person at the office of the T. & P. R. Road, St. Charles & Gravier St., in New Orleans, La.

R. B. PLEASANTS,
U. S. Marshal,
By DAN. A. ROSE,
Dy U. S. Marshal.

Endorsed: No. 99. United States circuit court, fifth circuit, western district of Louisiana. R. N. Smith *et als. vs.* John C. Brown & L. A. Sheldon, receivers T. & P. R. R. Copy of petition & citation inside to be served on L. A. Sheldon, receiver T. & P. R. R. Marshal's return. Filed May 15, '86. J. W. Wheaton, clerk.

8 *Extract of Minutes:*

TUESDAY, *July 20th*, 1886.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JOHN C. BROWN, Receiver, *et al.* } No. 99.

Exception filed and same assigned for hearing on Wednesday, July 21st, 1886.

Exception.

In Circuit Court of the United States for the Western District of La.

ROBERT N. SMITH *et al.*
vs.
RECEIVERS OF TEXAS & PACIFIC R'Y CO. } No. 99.

Now come defendants and specially deny that plaintiffs are the legal heirs of W. W. Smith, deceased, and, if heirs, deny that they are his sole and only heirs; therefore except to their capacity to sue and stand in judgment.

WISE & HERNDON,
Att'ys for Def'ts.

Endorsed: No. 99. Robert N. Smith *et al. vs.* Receivers T. & P. R'y Co. Exception. Filed July 20th, 1886. J. B. Beattie, d'y clerk.

9 *Extract of Minutes.*

WEDNESDAY, *July 21st*, 1886.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JNO. C. BROWN, Receiver, *et al.* } No. 99.

Exception filed herein referred to the merits, and time granted until Saturday, July 24th, 1886, to file papers.
Jury waived on trial of exceptions filed herein.
Exception taken up, tried, and same overruled.
Exception and plea of *res adjudicata* filed and same assigned for trial on Saturday, July 24th, 1886.

Extract of Minutes.

TUESDAY, *March 1st*, 1887.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JNO. C. BROWN, Receiver, *et als.* } No. 99.

Exception filed herein overruled.

10 *Extract of Minutes.*

WEDNESDAY, *March 2nd*, 1887.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JNO. C. BROWN, Receiver, *et al.* } No. 99.

Exception and plea of *res adjudicata* filed.
Answer and call in warranty filed and allowed.

Exception and Plea of Res Adjudicata.

In Circuit Court of the United States for the Western District of Louisiana.

ROBERT N. SMITH *et als.*
vs.
JNO. C. BROWN & L. A. SHELDON, Receivers Texas — Pacific Ry Co. } No. 99.

Now come John C. Brown and Lionel A. Sheldon, for themselves and receivers of the Texas & Pacific Ry Company, and, without answering to the merits of this case, file this their plea and exception of *res adjudicatta* to plaintiffs' action on the following grounds, to wit:

That in a suit entitled The State of Louisiana *vs.* W. W. Smith, No. 5135 on the docket of the district court of Caddo parish, La., filed —— —, 1857, defendant then put at issue the validity
11 and legality of his title to the land described in plaintiff's petition herein under and by virtue of the certificate and patent described in said petition and upon a final hearing judgment was rendered in said suit decreeing said certificate and patent null and void, decreeing the cancellation of same, and ordering them to be delivered to The State of Louisiana, plaintiff therein; all of which will fully appear by reference to a certified copy of pleadings, evidence, and judgment in said suit hereto annexed and made a part hereof.

That the plaintiffs in this suit, claiming to be the heirs of said W. W. Smith, are bound by the judgment in said suit, which is to them *res adjudicata*, and defendants therefore pray that this exception be sustained and plaintiffs' suit dismissed.

WISE & HERNDON,
Att'y. for Defendants.

Endorsed: No. 99. Robert N. Smith *et als. vs.* John C. Brown *et als.* Exception and plea of *res adjudicata*. Filed March 2, '87. Jno. Wheaton, clerk.

12 *Answer and Call in Warranty.*

In U. S. Circuit Court for the Western District of La.

ROBERT N. SMITH *et als.*
vs.
JOHN C. BROWN and LIONEL A. SHELDON, Receivers of Texas & Pacific R'y Company. } No. 99.

Now comes John C. Brown and Lionel A. Sheldon, for themselves and as receivers of The Texas & Pacific R'y Company, defendants herein, by counsel, and for answer to plaintiffs' petition deny all the allegations thereof and require strict proof.

Further answering, they allege that the sale or entry of said land as set forth in plaintiffs' petition was cancelled by the register of the State land office on the 10 day of June, 1853, as appears by the records of that office, and which cancellation was duly notified to said W. W. Smith, and that said sale, entry, and patent are null and were done without authority of law, in this, to wit:

1st. Because the law under which said entry was made had not been promulgated at the date of said entry.

2nd. Because said land had not at the time of said entry been legally surveyed, nor had any survey thereof been recognized by the State of Louisiana.

3rd. Because the patent to said land was issued by the
13 register in error of the fact that the said entry had been cancelled before the law authorizing the sale of shallow lakes had been promulgated.

Further answering, defendants allege that said land was never selected by the State of Louisiana as swamps and overflowed lands and has never been reported to the Commissioner of the General Land Office and never approved as such by the surveyor general or by the Secretary of the Interior or land commissioner; and further alleges that said land was never listed or returned by the Secretary of the Interior to the State of Louisiana as swamp and overflowed lands, and that the State of Louisiana has never acquired and never claimed said lands as swamp and overflowed lands.

And, furthermore, that said land does not and never did belong to that class of lands known or designated as swamp and overflowed lands, but to that other class of lands known or designated as "shallow lakes," and therefore not embraced in the grant of swamp

and overflowed lands from the United States Government under the acts of Congress of 1849 & 1850.

Further answering, defendants allege that the said Texas & Pacific R'y Co. is owner of said land and in possession thereof through
14 the aforesaid receivers, duly appointed by the United States circuit court for the eastern district of Louisiana, by deed from the New Orleans Pacific R'y Co. or by act of consolidation as set forth in plaintiff's petition, with full warranty of title and subrogation of all of said vendors' rights of action and warranty against all former owners of said land.

That said New Orleans Pacific R'y Co. by deeds translative of property purchased said lands from George M. Norman, L. L. Tompkies, Jr., I. G. McWilliams, T. H. Morris, John R. Jones, F. A. Leonard, and James Williams and Wylie, all of which will be seen by reference to certified copies of deeds hereto annexed and made part hereof for greater certainty.

And said named persons acquired said property by regular chain of title from W. D. Wylie, L. L. Tomkies, and T. P. Hotchkies, who purchased from W. D. Wylie and said Wylie from the United States Government, under act of Congress approved May 20th, 1862, and March 21st, 1864, entitled "An act to secure homesteads to actual settlers on the public domain," as will be seen by certificate or receiver's receipt No. 683 of date Febr'y 24th, 1872, and by patent from the United States of date —— —, —, which are hereto annexed and made part hereof.

15 Further, that said Wylie went into possession of said land as owner upon the issue of said receipt and patent and he and his venders have continued in possession thereof as owners ever since & by regular chain of title by deeds translative of property to the present owners & possessors as aforesaid.

They further allege that said property is worth the sum of ten thousand dollars.

Wherefore defendants pray that plaintiff's demand may be rejected and for judgment decreeing the Texas & Pacific R'y Company to be the owners of said described property in plaintiff's petition or such portions as were acquired by deeds as aforesaid and quieted in possession of same.

And further pray that the New Orleans Pacific R'y Company, of which E. B. Wheelock is president, and who resides at the domicil of said company in the city of New Orleans and State of La.; L. L. Tomkies, Jr., of De Soto parish, La.; George M. Norman, F. A. Leonard, and James Williams, of Caddo parish, La., be cited and ordered to defend this suit as warrantors, and in the event plaintiffs obtain judgment, as prayed for in their petition, that defendants recover judgment over against their said warrantors for such sum of money as will indemnify defendants for the loss and damage
16 they have sustained by reason of their action in the premises.

And pray for all orders & decrees necessary.

WISE & HERNDON,
Att'ys for Defendants.

Endorsed: No. 99. Robert N. Smith *et als. vs.* John C. Brown *et als.* Answer. Call in warranty. Filed March 2nd, 1887. Jno. W. Wheaton, clerk.

Citation.

THE UNITED STATES OF AMERICA, }
Western District of Louisiana. }

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

R. N. SMITH *et als.* } No. 99.
vs.
JOHN C. BROWN & L. A. SHELDON, Receivers, &c. }

To E. B. Wheelock, president of the New Orleans Pacific R'y Company, New Orleans, La.:

You are hereby summoned to comply with the demand contained in the petition & call in warranty, of which a copy
17 accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and western district of Louisiana, in the city of Shreveport, La., in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from Shreveport, La., the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice
[SEAL.] of the Supreme Court of the United States of America, at the city of Shreveport, La., this 7th day of March, A. D. one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the 111th year.

E. J. NOLAN, *Dy Clerk.*

Teste:

Marshal's Returns.

Received Mch 12, 1887, by R. B. Pleasants, U. S. mar., E. D. of La., and on the 12th March, 1887, I served a true copy of the within citation and accompanying petition on E. B. Wheelock, by handing same to him in person, at the office of the receivers of the Texas & Pacific Railroad Company, in the city of New Orleans, & *and* leaving same in his hands.

R. B. PLEASANTS,
18 *U. S. Mar., E. D. of La.*
By M. E. LIVANDAIS, *Dy.*

Endorsed: No. 99. United States circuit court, fifth circuit, western district of Louisiana. R. N. Smith *et als. vs.* John C. Brown & L. A. Sheldon, receivers, &c. Copy of petition and citation inside to be served on E. B. Wheelock, pres't. Filed March 14th, 1887. E. J. Nolan, d'y cl'k.

Citation.

THE UNITED STATES OF AMERICA: }
Western District of Louisiana. }

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

R. N. SMITH *et als.*
vs.
JOHN C. BROWN & L. A. SHELDON, Receivers, &c. } No. 99.

To L. L. Tomkies, Jr., of De Soto parish, La.:

19 You are hereby summoned to comply with the demand contained in the petition & call in warranty, of which a copy accompanies this citation, or to deliver your answer to the same, in the office of the clerk of the circuit court of the United States, fifth circuit and western district of Louisiana, in the city of Shreveport, La., in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from Shreveport, La., the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Jus-
[SEAL.] tice of the Supreme Court of the United States of America, at the city of Shreveport, La., this 7th day of March, A. D. one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the 111th year.

Teste: E. J. NOLAN, *Dy Clk.*

Marshal's Return.

Received in office M'ch 8th, 1887, & on the 17th day of same month & year I proceeded from Shreveport, La., to Gloster, De Soto parish, & there served a certified copy of this citation & call in warranty thereto attached on L. L. Tomkies, Jr., by leaving same in his hands.

A. C. GIBSON,
U. S. Marshal.

20 Endorsed: No. 99. United States circuit court, fifth circuit, western district of Louisiana. R. N. Smith *et als. vs.* John C. Brown & L. A. Sheldon, receivers, &c. Copy of petition and citation inside to be served on L. L. Tomkies, Jr. Filed March 21st, '87. E. J. Nolan, d'y cl'k.

Citation.

THE UNITED STATES OF AMERICA, }
Western District of Louisiana. }

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

R. N. SMITH *et als.*
vs.
JOHN C. BROWN & L. A. SHELDON, Receivers, &c. } No. 99.

To George M. Norman, of Caddo parish, La.:

You are hereby summoned to comply with the demand contained in the petition & call in warranty, of which a copy accompanies this citation, or to deliver your answer to the same in the
21 office of the clerk of the circuit court of the United States, fifth circuit and western district of Louisiana, in the city of Shreveport, La., in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from Shreveport, La., the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city
[SEAL.] of Shreveport, La., this 7th day of March, A. D. one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the 111th year.

Teste: E. J. NOLAN, *Dy Clerk.*

Marshal's Return.

Received in office Mch 7th, 1887, & on the 30th day of same month & year made service by leaving a copy of the cit. & pet. & call in warranty with Mrs. Geo. M. Norman at the domicil of Geo. M. Norman, she being over the age of 14 years. Said service was made in Shreveport, La.

P. B. WEAKS, *Dy Mar.*

Endorsed: No. 99. United States circuit court, fifth circuit, western district of Louisiana. R. N. Smith *et als. vs.* John C. Brown & L. A. Sheldon, receiver-, &c. Copy of petition and citation
22 inside to be served on George M. Norman. Filed March 31st, '87. E. J. Nolan, d'y clerk.

Citation.

UNITED STATES OF AMERICA, }
Western District of Louisiana. }

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

R. N. SMITH *et als.*
vs.
JOHN C. BROWN & L. A. SHELDON, Receivers, &c. } No. 99.

To F. A. Leonard, of Caddo parish, La.:

You are hereby summoned to comply with the demand contained in the petition & call in warranty, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and western district of Louisiana, in the city of Shreveport, La., in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from Shreveport, La., the place where the court is held.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Shreveport, La., this 7th day of March, A. D. one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the 111th year.

[SEAL.] 23

Teste: E. J. NOLAN, *Dy Clerk.*

Marshal's Return.

Rec'd in office Mch 7th, 1887, & on the 28th day of same month & year I made personal service on F. A. Leonard by leaving in his hands a certified copy of *of* this citation & certified copy of petition & call in warranty thereto attached.

This service was made in Shreveport, La.

P. B. WEAKS, *Dy Mar.*

Endorsed: No. 99. United States circuit court, fifth circuit, western district of Louisiana. R. N. Smith *et als. vs.* John C. Brown & L. A. Sheldon, receivers, &c. Copy of petition and citation inside to be served on F. A. Leonard. Filed March 31st, '87. E. J. Nolan, d'y cl'k.

24 *Citation.*

THE UNITED STATES OF AMERICA, }
Western District of Louisiana. }

Circuit Court of the United States, Fifth Circuit, Western District of Louisiana.

R. N. SMITH *et als.* }
vs. } No. 99.
JOHN C. BROWN & L. A. SHELDON, Receivers, &c. }

To James Williams, of Caddo parish, La.:

You are hereby summoned to comply with the demand contained in the petition & call in warranty, of which a copy accompanies this citation, or to deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and western district of Louisiana, in the city of Shreveport, La., in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from Shreveport, La., the place where the court is held.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of Shreve-
[SEAL.] port, La., this 7th day of March, A. D. one thousand eight hundred and eighty-seven, and of the Independence of the United States of America the 111th year.

Teste: E. J. NOLAN, *Dy Clk.*

25 Endorsed: No. 99. United States circuit court, western district of Louisiana. R. N. Smith *et als. vs.* John C. Brown & L. A. Sheldon, receivers, &c. Copy of petition & citation inside to be served on James Williams.

Marshal's Return.

Rec'd in office M'ch 7th, 1887, & on the 31st day of same month and year I made service by leaving at the domicil of James Williams, in the hands of Mrs. James Williams, a person over the age of fourteen years & residing at said domicil, a copy of this cit. & pet. & call in warranty. Service made in Shreveport, La.

P. B. WEAKS, *Dy Mar.*

Filed April 1st, '87.

E. J. NOLAN, *Dy Clk.*

Extract of Minutes.

MONDAY, *July 18th*, 1887.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JNO. C. BROWN, Receiver, *et al.* } No. 99.

Time extended until tomorrow, Tuesday, July 19th, 1887, to file motion for the appointment of *curator ad hoc*, and also to file answer to call in warranty.

TUESDAY, *July 19th*, 1887.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

26 *Plea of Prescription.*

R. N. SMITH *et al.*
vs.
JOHN C. BROWN, Receiver, *et al.* } No. 99.

Plea of prescription filed. Answer to call in warranty of Geo. M. Norman filed.

ROBERT N. SMITH *et als.*
vs.
JOHN C. BROWN & LIONEL A. SHELDON, Receivers of Texas & Pacific R'y Co. } No. 99.

Now come defendants, by counsel, and aver that this Texas & Pacific Railway Company and its vendors have been in the quiet, peaceable, undisturbed, & notorious possession as owners under authoritic acts of sale translative of property and duly recorded of the property described in plaintiffs' petition for a period exceeding ten years, and therefore pleads the prescription of ten years to plaintiffs' right of action.

WISE & HERNDON,
Att'ys for Df'd'ts.

Endorsed: No. 99. United States circuit court, western district of La. Robert N. Smith *et als. vs.* Jno. C. Brown & L. A. Sheldon, receivers T. & P. R'y Co. Plea of prescription. Filed July 19th, 1887. J. B. Beattie, d'y cl'k.

27 In the United States Circuit Court for the Western District of Louisiana.

Answer to Call in Warranty.

ROBERT N. SMITH *et als.*
vs.
JOHN C. BROWN and LIONEL A. SHELDON, Receivers of Texas & Pacific Railway Company. } No. 99.

Now comes Geo. M. Norman, who says — been cited as warrantor of the said Texas and Pacific Railroad Company, by attorney, and, for answer to said call in warranty & to plaintiffs' petition, says that all and singular the allegations therein are untrue.

Further, for an answer to said respondent, he says he adopts the answer of the said receivers and joins in the same defense; and the said George M. Norman, by his said attorney, further shows that he purchased that portion of the land for which the call in
28 warranty is made against him from W. D. Wylie and W. D. Wylie from the United States Government, as per certificate No. 683, and that the said W. D. Wylie is now a permanent non-resident of the State of Louisiana & is a resident of the city & county of Dallas, in the State of Texas, and it is necessary that an attorney *ad hoc* or *curator ad hoc* be appointed by your honor to defend & protect the interest of the said W. D. Wylie and on whom process of citation may be served.

And, further, the said George M. Norman prays that the said W. D. Wylie be cited and ordered to defend this suit as warrantor; as to respondent he prays that —— —— be appointed *curator ad hoc* to represent said warrantor & receive service of said citation, and, in event plaintiffs obtain judgment as prayed for in their petition, that respondent recover judgment over against said warrantor for such sum of money as will indemnify defendants for the loss and damage he has sustained by reason of their action in the premises, and prays for all orders and decrees necessary.

July 19th, 1887.

J. L. HARGROVE,
Att'y for G. M. Norman.

In this case, on reading the petition for a *curator ad hoc*,
29 the law being in favor thereof, it is ordered by the court that H. Randolph, an att'y of this court, be, and he is hereby, appointed *curator ad hoc*, as prayed for.

Done and signed in this July 19th, 1887.

ALECK BOARMAN, *Judge.*

Endorsed: No. 99. R. N. Smith *et al. vs.* John C. Brown & L. A. Sheldon, receivers, &c. Answer and call in warranty of George M. Norman. Filed July 19th, 1887. J. B. Beattie, d'y cl'k.

Extract of Minutes.

MONDAY, *February 27th*, 1888.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JOHN C. BROWN, Receiver, *et al.* } No. 99.

Continued.

30 *Extract of Minutes.*

TUESDAY, *July 17th*, 1888.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JNO. C. BROWN, Receiver, *et al.*

Order for surveyor allowed W. R. Devoe, selected by plaintiff, & surveyor to be named by defendants.

Extract of Minutes.

MONDAY, *July 21st*, 1890.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JNO. C. BROWN, Receiver, *et al.*

Default entered as to certain parties called in warranty.

Appearance of Texas & Pacific Ry Co.

U. S. Circuit Court, Western Dist. La.

R. N. SMITH *et al.*
vs.
JOHN C. BROWN *et al.*, Receivers. } No. 99.

Now comes the Texas & Pacific Railroad Company and, adopting all the pleadings herein presented by John C. Brown & L. A.
31 Sheldon, formerly receivers of said company, prays that said company be substituted as defendant herein.

WISE & HERNDON,
Att'ys T. & P. Ry Co.

Endorsed: No. 99. R. N. Smith *et al. vs.* Jno. C. Brown *et al.* Appearance of T. & P. R. R. Co. Filed Jan'y 3rd, A. D. 1891. Leon M. Carter, deputy cl'k.

Extract of Minutes.

WEDNESDAY, *February 25th*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JNO. C. BROWN, Receiver, *et al.*

Assigned for trial on Saturday, February 28th, 1891.

32 *Extract of Minutes.*

SATURDAY, *February 28th*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JNO. C. BROWN, Receiver, etc.

This case, as per assignment, came on at this time to be heard. Whereupon came the following jury, to wit, Marcus Dingle, William Hendrick, Joe C. Elstner, I. L. Helpman, Munroe Benton, Ben. Landman, John J. Gammon, Zack Howell, Daniel Donovan, M. Bernstein, B. F. Barker, Wm. Harper, twelve good and lawful men of the district, duly empanneled and sworn to try this case and a true verdict render according to the evidence. The jury being complete, the court appointed Z. Howell, Esq., as foreman thereof and the trial was proceeded with. Upon conclusion of the introduction of the testimony the case was continued until Monday, March 2nd, 1891, for argument.

Plaintiff's Note of Evidence.

1st. Plat T. 18, R. 13, & T. 18, R. 14, marked Exhibit "A."
33 2. Certificate of entry by Wm. Smith of Cross Lake, in section 25, T. 18, R. 14, marked Exhibit "B."
3. Plat of sec. 25, T. 18 N., R. 14, marked Exhibit "C."
4. Certified copy of record in the matter of the tutorship of the minors of Jno. K. Smith, marked Exhibit "D."
5. Certified copy of power of attorney from John Brown to J. B. Smith, marked Exhibit "E."
6. Petition for partition in case of Brown, tutor, etc., marked Exhibit F.
7. Petition of John W. Smith to be appointed curator, etc., marked Exhibit "G."
8. Judgment homologating final account of Jno. W. Smith, marked Exhibit "H."
9. Mandate from J. F. Smith to Jno. W. Smith, marked Exhibit "I."

10. Petition & order registering will of Jos. F. Smith, marked Exhibit "J."

11. Charter of the city of Shreveport, 1871, marked Exhibit K.

Defendant's Note of Evidence.

1st. Transcript of record in case of State of Louisiana *vs.*
34 W. W. Smith, No. 5135, & certified copy of minutes of S. C. of La., dismissing suit, marked Exhibit 1.

2. Patent and receiver's certificate of the land in controversy annexed to depositions of W. D. Wylie.

3. Receiver's receipt, dated Feb'y 24th, 1872, annexed to deposition of W. D. Wylie.

4. Deposition of W. D. Wylie.

5. Certified copy of deed from W. D. Wylie to Hotchkies & Tompkies, dated Nov. 20th, 1872.

6. Copy of judgment homologating portion in suit 9823 in district court, parish of Caddo.

7. Copy of deed from W. D. Wylie to John McKeller.

8. Copy of deed from John McKeller to W. D. Wylie.

9. Copy of deed from Wm. D. Wylie to Geo. M. Norman.

10. Copy of deed from Geo. M. Norman to N. O. P. R'y Co.

11. Copy of deed from W. D. Wylie to McWilliams, Morris & Jones.

12. Copy of deed from McWilliams, Morris & Jones to N. O. P. R'y Co.

13. Copy of deed from L. L. Tomkies (sheriff's sale) to N. O. & P. R'y Co.

35 14. Copy of deed from L. L. Tompkies (sheriff's sale) to L. L. Tomkies, Jr.

15. Copy of deed from L. L. Tomkies to N. O. P. R'y Co.

16. Copy of deed from State of La. to F. A. Leonard.

17. Copy of deed from F. A. Leonard to N. O. P. R'y Co.

18. Copy of deed from W. D. Wylie & wife to T. P. R'y Co.

Admission.

It is admitted by counsel for plaintiffs and defendants that the Texas and Pacific Railroad Company acquired from the New Orleans and Pacific Railroad Company all its rights, title, and interest to the property in dispute.

Admission.

It is admitted that the property in dispute is worth more than the sum of five thousand dollars.

19. Map of Wylie's subdivision, in lot 15, sec. 25, T. 17, R. 14, Shreveport, La.

Counsel for plaintiff object to the answer to the eighth interrogatory in the testimony of W. D. Wylie.

(Here follows diagram marked p. 36.)

Filed-notes.

36 At A, white oak 20 in. dia. S. 19 E. 46 lks, white oak 18 in. dia. N. 19 W. 28 lks.

White oak 20 in. dia. S. 45 W. 68 lks, ash 15 in. dia. N. 42 E. 93 lks.

B, black oak 18 in. dia. N. N. 84 E. 55 lks, hickory 12 in. dia. S. 51 E. 46 lks.

B, hickory 20 in. dia. S. 36 W. 58 lks, red oak 18 in. dia. N. 32 W. 81 lks.

A, willow 18 in. dia. S. 28 W. 16 lks, willow 12 in. dia. N. 19 E. 11 lks.

B, post oak 12 in. dia. S. 25 W. 17 lks, elm 12 in. dia. S. 89 E. 32 lks.

37 C, sweet gum 12 in. dia. N. 40 E. 14 lks, sweet gum 20 in. dia. N. 32 W. 18 lks.

Traverse of Silver Lake.

From the point C traverse Silver Lake, viz: S. 30 E. 10.00, S. 60 E. 8.00, N. 30 E. 6.00, S. 20 E. 6.00, S. 64 E. 6.00, N. 35 E. 8.00, N. 35 W. 11.00, N. 45 E. 5.00, N. 87 E. 15.84 to Larkin Edwards' corner; thence S. 75 E. 14.00, S. 56¾ E. 32.10 to post on line between sections 31 & 32.

Thence in front of section 32, S. 50 E. 6.00, south 3.50 to high bluff, S. 65 W. 5.10 to corner of 31 & 32 on southern margin of Silver Lake.

Traverse of Silver Lake in front of sec. 31, S. 65 W. 8.00, N. 84 W. 10.00, S. 45 W. 15.00, N. 20 W. 10.00, N. 55 W. 10.00, S. 47 W. 14.00, N. 59 W. 10.00, N. 27 W. 8.00, N. 59½ W. 21.25 to traverse post on range corner to sections 31 & 36; thence with the traverse, of Edward-' claims N. 34 W. 10.00, north 5.00, S. 68 E. 6.00 to place of beginning.

LAND OFFICE, LA., *June 10th*, 1853.

I, W. H. Crenshaw, register of the land office of La., do hereby certify the above to be a true copy of the field-notes as certified by the surveyor gen'l of La. on file in this office.

W. H. CRENSHAW, *Register.*

STATE LAND OFFICE,

38 BATON ROUGE, LA., *May 14th*, 1856.

I hereby certify the foregoing field-notes and accompanying sketch to be true copies of the originals on file in this office, which have been approved by the surveyor general of Louisiana.

In testimony whereof I have hereunto affixed the seal of my office the day above written.

B. HARALSON, *Register.*

Endorsed: Plat, T. 18, R. 13, & T. 18, R. 14. Shreveport & Silver Lake. United States circuit court, western district of La.

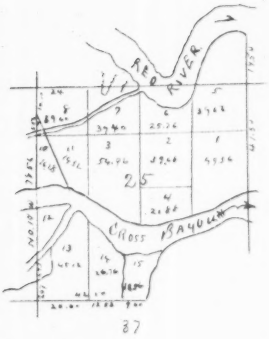
~~4~~

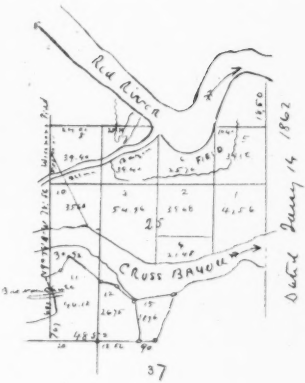
Ex Exhibit "C"

No. 133
T.W.P. Ry Co
vs
Southwestal.

p 40

Township 18 N.R. 14 W





R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* No. 99. Exhibit "A." Offered in evidence on behalf of plaintiffs and filed Feb'y 28th, 1891. J. B. Beattie, clerk.

39 EXHIBIT "B."

MAY 14TH, 1853.

Purchaser, Wm. A. Smith.
Subdivision, Cross Lake.
Sec., 25.
Township, 18.
Range, 14.
Quantity, 21.18.
Price per acre, $1.25 = $26.47.
Order No. 2.

STATE LAND OFFICE, BATON ROUGE, *May 22d*, 1856.

I hereby certify the above and foregoing to be a true and correct transcript of entry as taken *from* Order Book of Swamp Lands now on file in my office. The word "from" interlined and approved.

B. HARALSON, *Register.*

Endorsed: Certificate of entry by Wm. W. Smith, of Cross Lake, in sec. 25, town. 18, R. 14., 21.18 acres. United States circuit court, western district of La. R. N. Smith *et al. vs.* John C. Brown, receivers, *et al.* No. 99. Exhibit "B." Offered in evidence on behalf of plaintiffs and filed Feb'y 28th, 1891. J. B. Beattie, clerk.

(Here follows diagram marked p. 40.)

40 Endorsed: Plat of T. 18 N., R. 14 W. United States circuit court, western dist. La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* No. 99. Exhibit "C." Offered in evidence on behalf of plaintiffs and filed Feb'y 28th, 1891. J. B. Beattie, clerk.

41 EXHIBIT "D."

To the hon. the judge of the 18th judicial district of the State of Louisiana in and for the parish of Caddo:

The petition of John Brown, of the county of Shelby, State of Kentucky, with respect represents that he has been duly appointed and has qualified as guardian of Wm. L. Smith, Elizabeth Ann Smith, Mary B. Smith, Robert N. Smith, Jno. S. Smith, Mary M. Smith, and Martha L. Smith, minor heirs of John K. Smith, dec'd, late of the county of Shelby, State aforesaid, as appears by letters of guardianship duly authenticated and annexed as part of this petition.

Petitioner further represents that the said minor heirs own a considerable amount of property in the parish of Caddo, which they inherited from their deceased father, the said John K. Smith, deceased, and that they are heirs-at-law of the late Wm. W. Smith,

dec'd, whose succession is opened in Caddo parish, and as such entitled to one-half of the succession of the said W. W. Smith, by virtue of representation from their father, the said Jno. K. Smith, dec'd, who was a brother of the said Wm. W. Smith, dec'd.

The said Wm. W. Smith having no ascendants or de-
cendants and no collateral heirs except your petitioner's wards and
42 James Smith, of the county of Shelby, who is a brother of the said W. W. Smith, dec'd—

Petitioner represents that it is important he should be recognized as tutor or guardian aforesaid, to take possession of said property and represent said minors.

Petitioner represents that no one residing in this parish is willing to take upon himself the tutorship and comply with existing laws by giving the required security and no relative within the fourth degree that can be required to take the tutorship.

That in consideration of the premises petitioner is desirous of being recognized as tutor, having been appointed guardian in conformity with the laws of Kentucky, where the heirs reside, and of taking possession of the property and removing the property to the State of Kentucky after legal delays and notices. He represents that it would be to the interest of said minors to sell the property inherited from their father, as most of it is unproductive and subject to heavy taxes. He represents that a family meeting of the relatives and friends of said minors should be convoked to give their advice with regard to the disposition of said property and the administration of the same, and that an undertutor should be appointed. He represents that the said minors have only two
43 relatives domiciliated in the parish, viz., Jno. W. Smith and Joseph Smith; that the family meeting will be composed principally of friends.

The premises considered, petitioner prays that he be recognized as guardian aforesaid; that a family meeting of the friends and relatives of said minors be convoked to give their advice touching the administration of the property of said minors and whether he shall accept the sucession of W. W. Smith, dec'd, with the benefit of security; whether the property inherited from their father should be sold and on what terms; also what disposition shall be made of their portion of the succession of W. W. Smith, dec'd, and to advise and recommend, if they see proper, some other suitable person for tutor, and prays that an undertutor be appointed, and for all orders and decrees necessary and for general relief.

Petitioner represents that the aforesaid James Smith, coheir of petitioners herein, is present, and prays that he have notice of this application and prays for an inventory and appraisement.

CRAIN & NUTT, *Att'ys.*

THE STATE OF LOUISIANA, }
Parish of Caddo. }

44 In this case, by reason of the law and the evidence, it is ordered, adjudged, and decreed that a family meeting of the relatives and friends of the minor heirs of Jno. K. Smith, dec'd, be

convoked for the purpose of advising whether the property of the said minors, situated in Caddo parish, should be administered by their guardian, Jno. Brown, appointed in conformity with the laws of Kentucky, where said minors reside, by virtue of said appointment, or whether a tutor should be appointed and required to comply with the laws of this State by giving the required security; and, if so, to recommend a suitable person and what disposition should be made of the property belonging to said minors inherited from their deceased father, and if they think it advisable to sell the same on what terms it ought to be sold, and whether the guardian or tutor should be permitted to accept the succession of W. W. Smith, deceased, for the benefit of said minors, and, further, what disposition shall be made of the portion of said succession accruing to said minors, and that commission issue to some duly qualified notary public in and for said Caddo parish to hold the family meeting. It is ordered that said family meeting be composed of Jno. W. Smith and Joseph Smith, relatives of the minors, and the following friends, viz., N. S. McClure.

It is further ordered that T. C. Lewis be appointed under-
45 tutor, upon his taking the oath required by law, and that commission issue to take an inventory and apprais-ment as prayed for.

D. CRESWELL,
Judge 18th Dist.

I accept service of the foregoing petition, waive citation and time, and admit the allegations of the petition.

JAMES F. SMITH.

Endorsed: No. 720. In the matter of the tutorship of the heirs of J. K. Smith. Petition and order for family meeting. Filed Nov. 30th, 1858. A. H. Leonard, dep. clerk.

STATE OF LOUISIANA, }
Parish of Caddo. }

In District Court.

To Thos H. Pitts, recorder & *ex off.* notary public in and for the parish of Caddo, Greeting:

You are hereby commanded in the name of the State of Louisiana and our said court to convoke, at such time and place as you may think fit, a meeting of the friends and relatives of the minor heirs of J. K. Smith, deceased, late of the county of Shelby, State of Kentucky, to deliberate and advise whether the property of the said minors situated in the parish of Caddo, State of Louisiana,
46 shall be administered by the guardian, John Brown, appointed in conformity with the laws of the State of Kentucky, by virtue of said appointment; whether a tutor for said minors shall be appointed and required to comply with the laws of this State by giving the required bond; and, if so, to recommend a suit-

able person and advise what disposition shall be made of the property belonging to said minors, inherited from their father.

If they think it advisable to sell the same, upon what terms, and, further, whether the guardian or tutor shall accept the succession of W. W. Smith, deceased, for the benefit of said minors, and, further, what disposition shall be made of that portion of the succession accruing to said minors.

It is further ordered that the said family meeting be composed of John W. Smith, Joseph B. Smith, N. S. McClure, B. M. Johnson, and B. Logan, and a procès verbal of same you will make to our said court according to law.

Given under my hand and seal of office this 30th Nov'r, 1858.

THOS. H. CORBETT, *Dep. Clerk.*

THE STATE OF LOUISIANA, }
Parish of Caddo. }

We and each of us, appointed members of a family meeting to deliberate and advise on the interests of the minor
47 heirs of John K. Smith, deceased, do solemnly swear that in this acting we will act fairly and impartially and to the best of our ability, so help us God.

B. M. JOHNSON.
B. LOGAN.
N. S. McCLURE.
JAS. SMITH.
J. W. SMITH.

Sworn to and subscribed before me this 30th day of November, A. D. 1858.

THOS. H. PITTS, *Recorder.*

THE STATE OF LOUISIANA, }
Parish of Caddo. }

By virtue of the annexed commission issued out of the honorable the district court of the parish of Caddo and to me, the undersigned recorder & *ex officio* notary public, directed, I caused to appear at my office, in the town of Shreveport, John W. Smith, Joseph B. Smith, Norment S. McClure, B. M. Johnson, and B. Logan, who, after having been duly sworn to advise and deliberate upon the affairs of the minor children of John K. Smith, deceased, late of the county of Shelby, State of Kentucky; and, further, whether or not the property of said minors in the parish of Caddo, State of Louisiana, shall be administered by their guardian, John Brown, appointed in conformity with the laws of the State of Kentucky by virtue of said appointment; whether a tutor for said minors
48 shall be appointed and required to comply with the laws of this State by giving the required bond; and, if so, to recommend a suitable person, and also to advise what disposition shall be made of the property belonging to said minors inherited from their father; if they think it advisable to sell the same and upon what terms; and, further, whether the guardian or tutor shall accept the succession of W. W. Smith, deceased, for the benefit of said minors:

And, further, what disposition shall be made of the succession accruing to said minors, *who*, after having taken and subscribed the annexed oath, did deliberate and advise as follows, to wit:

That John Brown, the guardian of the minor heirs of John K. Smith, deceased, administer the property of said minors in the parish of Caddo on his giving bond and taking the oath required by law for the following reasons, to wit: Some doubt might arise as to the right of said guardian administering said property under the acts of 1843.

They further advise that the property inherited from their father be sold, one-fourth cash and the balance of the purchase-money payable in one, two, and three years from date of sale, bearing eight per cent. interest from date; purchaser or purchasers to give their notes
49 dated and due as above, with approved personal security, with special mortgage, waiving benefit of appraisement retained on the property, for the reason that the property, most of it, is unimproved, not productive, and subject to high tax. That portion of it which is improved consists of frame buildings which are rapidly going to decay. They think it advisable for the guardian for said minors to accept the succession of W. W. Smith for the benefit of the minors, with the benefit of the inventory. They further advise that all the unproductive property inherited from the succession of W. W. Smith by said minors, which they may receive by partition to be hereafter made, be sold on the same terms as that inherited from their father, J. K. Smith, deceased, and if the spring place, cistern, and appurtenances should fall to said minors by said partition, be sold for one-fifth cash and the balance on a credit of one, two, three, and four years, purchasers to give notes with approved personal security bearing 8 % interest from date and special mortgage waiving the benefit of appraisement; and that any other property that may fall to them, except the property on the levee, be sold on the same terms as that inherited from their father, J. K. Smith. They think it to the interest of said minors to keep the property on the levee inherited from the succession of W. W.
50 Smith, deceased. They do not think it advisable for the tutor of said minors to take charge of any of the property belonging to the succession of W. W. Smith, deceased, which is administered by John W. Smith until a sufficient property has been sold or disposed of to pay the debts and liabilities of same.

Thus done and signed by the members of said family meeting and Thos. C. Lewis, undertutor for said minors, in the presence of Albert H. Leonard and Independence Crain, witnesses of lawful age and domicil, who sign with the parties and me, the said notary, on this 30th day of November, A. D. 1858.

B. M. JOHNSON.
B. LOGAN.
M. S. McCLURE.
JOS. B. SMITH.
J. W. SMITH.

Attest: A. H. LEONARD.
PENN. CRAIN.

I approve the above proceedings.

T. C. LEWIS, *Undertutor.*

THOS. H. PITTS,
Recorder & ex Off. Not. Public.

To the hon. the judge of the 18th judicial district of the State of Louisiana in and for Caddo parish:

The petition of John Brown with respect represents in the
51 matter of the tutorship of the minor heirs of Jno. K. Smith, dec'd, that he caused a family meeting of the relatives and friends of said minors to be convoked on the 30th day of November, 1858, and that the process verbal of their deliberation has been returned and filed, to which reference is hereby made. He alleges that the proceedings were regular and that he is desirous of having the same homologated. Wherefore he prays for judgment of homologation; that he be permitted to qualify as tutor and have the property sold, as advised by said meeting; for a commission to take an inventory and appraisement; that his bond be fixed, and for all orders and decrees necessary and for general relief, for citation to the undertutor and att'y of absent heirs of W. W. Smith, dec'd.

CRAIN & NUTT.

THE STATE OF LOUISIANA, }
Parish of Caddo, }

By reason of the law and the evidence and the foregoing application it is ordered, adjudged, and decreed that the proceedings of the family meeting of the minor heirs of Jno. K. Smith, dec'd, had on the 30th day of November, 1858, before Thos. H. Pitts, recorder & *ex officio* notary public, be homologated and made the judgment of the court; that Jno. Brown be appointed tutor of said minor heirs and recognized as tutor and have letters of tutorship on his giving bond, which is hereby fixed at sixty thousand dollars, and
52 on his taking the oath required by law, and that the property belonging to said minors be sold and administered as advised by said family meeting, and that an inventory and appraisement of the property, rights, and credits of said minors be made; and it is ordered that R. White and S. Von Bibber be appointed appraisers.

Done and signed in open court this 1st day of December, 1858.

D. CRESWELL,
Judge 18th Dist.

I accept service of the foregoing petition and consent to the homolgation prayed for.

T. C. LEWIS.

Endorsed: No. 729. In the matter of the tutorship of the heirs of J. K. Smith. Petition and judgment. Homologating proceedings of family meeting. Filed Dec'r 1st, 1858. N. E. Wright, clerk.

STATE OF LOUISIANA, }
Parish of Caddo. }

I, John Brown, do solemnly swear that I will faithfully and impartially discharge and perform all the duties and trusts incumbent on me by law as tutor to the minor heirs of J. K.
53 Smith, deceased, to the best of my ability and understanding, so help me God.

JOHN BROWN.

Sworn to and subscribed before me this first day of Dec'r, 1858.
N. E. WRIGHT, *Clerk.*

Endorsed: No. 720. In the matters of the tutorship of the heirs of J. K. Smith. Oath of tutor. Filed Dec'r 1st, 1858. N. E. Wright, clerk.

THE STATE OF LOUISIANA, }
Parish of Caddo. }

I, T. C. Lewis, do solemnly swear that I will faithfully and impartially discharge all the duties incumbent on me by law as undertutor of the minor heirs of Jno. K. Smith, dec'd, to the best of my abilities, so help me God.

T. C. LEWIS.

Sworn to and subscribed before me this November 30th, 1858.
A. H. LEONARD, *Dep. Clerk.*

Endorsed: No. 720. In the matter of the tutorship of the heirs of J. K. Smith. Oath of undertutor. Filed Nov. 30th, 1858. A. H. Leonard, dep. clerk.

54 STATE OF LOUISIANA, }
Parish of Caddo. }

Know all men by these presents that we, John Brown, as principal, and John W. Smith, J. B. Smith, and L. M. Nutt, as sureties, are held and firmly bound unto N. E. Wright, clerk of the district court in and for the parish and State aforesaid, or his successor or successors in office, for the use and benefit of the heirs and legal representatives of John K. Smith, deceased, in the sum of sixty thousand dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Dated at Shreveport this 1st day of Dec'r, A. D. 1858.

Whereas the above-bound John Brown has been appointed tutor to the minor heirs of J. K. Smith, deceased:

Therefore the condition of this obligation is such that if the said John Brown shall well and faithfully discharge and perform all the duties of tutor as aforesaid according to law, then the above obligation to be null and void; otherwise to remain in full force and virtue.

JOHN BROWN.
JOHN W. SMITH.
JOS. B. SMITH.
L. M. NUTT.

55 Endorsed: No. 720. In the matter of the tutorship of the heirs of J. K. Smith. Bond. Filed Dec'r 1st, 1858. N. E. Wright, clerk.

STATE OF LOUISIANA, }
Parish of Caddo. }

In Tenth Judicial District Court.

Whereas John Brown has this day been appointed tutor of the minors of J. K. Smith, deceased, and having given bond and security and taken the oath as prescribed by law: Now, therefore, he is hereby authorized and fully empowered to discharge and perform all and singular the duties appertaining to the said appointment according to law.

In testimony whereof I have hereuntosigned my name and affixed my seal of office on this twenty-fourth day of January, A. D. 1866.

A. L. MERSHAN, *Clerk.*

Endorsed: No. 720. Tutorship of minors of J. K. Smith. Letters to tutor. Filed 24th Jan'y, 1866. A. L. Mershan, clerk.

STATE OF LOUISIANA, }
Parish of Caddo. }

I, W. P. Ford, clerk of the 1st judicial district court of the State of Louisiana held in and for the parish of Caddo, do hereby
56 certify that the foregoing sixteen and a half (16½) pages contain a true, full, and correct transcript of the petition and order for a family meeting, the commission for and proces verbal of and the petition for and the judgment homologating the proceedings of said family meeting and appointing tutor, oaths of tutor and undertutor, bond of and letters testamentary to tutor in the matter of the tutorship of the minors of John K. Smith, dec'd, No. 720 on the docket of said district court, as the same now appear on file and of record in my office.

Given under my hand and official seal, at Shreveport, La., on this 22nd day of July, A. D. 1886.

[SEAL.] W. P. FORD,
Clerk 1st Dist. Court of La.

Endorsed: No. 99. U. S. C. C., W. D. La. R. N. Smith *vs.* Jno. C. Brown *et al.* Copy of tutorship of minors of John K. Smith. Exhibit "D." Offered in evidence on behalf of pl'ffs and filed Feb'y 28th, 1891. J. B. Beattie, clerk.

57 EXHIBIT "E."

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day before me, Thomas Henry Pitts, recorder and *ex officio* notary public in and for the parish of Caddo, State of Louisiana, duly commissioned and sworn, came and ap-

peared John Brown, of Shelby county, State of Kentucky, and tutor of the minor heirs of John K. Smith, deceased, who declared that he had and do- by these presents nominate, constitute, and appoint Joseph B. Smith, of the parish of Caddo, his true and lawful agent and attorney-in-fact for him and in his name and place and stead to represent him, the said appearer, as guardian and tutor of said minors during his absence from the State of Louisiana; to sign his name to all deeds and instruments of writing of whatever nature or kind; to sign all conveyances made by order of court, and to fully represent him, the said John Brown, in all matters concerning said minors in *and* as full manner as he could if personally present, hereby ratifying and confirming all the acts of his said attorney done by virtue hereof as though he was personally present acting himself.

Thus done and signed, in my office, in the town of Shreveport, parish of Caddo, in presence of the undersigned lawful wit-
58 nesses, who sign with the parties and me, notary, on this 6th day of December, A. D. 1858.

JOHN BROWN.
JOS. B. SMITH.
THOMAS H. PITTS,
Recorder & ex Officio Notary Public.

Attest: E. H. PENNALL.
R. R. HACKETT.

CLERK'S OFFICE, CADDO PARISH, LA.

I hereby certify that the above and foregoing is a true and correct copy of the original power of attorney on file and of record in my office.

Given under my hand and seal of office, at Shreveport, La., on this the 28th day of February, A. D. 1887.

[SEAL.] W. G. BONEY,
Deputy Clerk & ex Officio Deputy Recorder.

Endorsed: No. 99. U. S. C. C., W. D. La. Offered in evidence on behalf of pl'ffs. "John Brown, tutor, to Jos. B. Smith." "Power of attorney." Copy. In case of R. N. Smith *vs.* M. C. Brown *et al.* Exhibit "E." Filed Feb'y 28th, 1891. J. B. Beattie, clerk.

59 EXHIBIT F.

To the hon. the judge of the 10th judicial district of the State of Louisiana in and for the parish of Caddo:

The petition of John Brown, tutor of Robert Smith and John L. Smith, minor children of *of* Jno. K. Smith, dec'd, late of the State of Kentucky, and Wm. L. Smith & Elizabeth A. Duvall, wife of M. Duvall, authorized and assisted by her said husband, all of the State of Kentucky, with respect represents that as the children, the legal heirs and representatives of the said Jno. K. Smith, dec'd, who was the brother of the late W. W. Smith, dec'd, they own (the said Brown in his said capacity) one-half the succession of the said

Wm. W. Smith, dec'd, which was opened in the parish of Caddo; that James F. Smith, of the county of Shelby, State of Kentucky, now present in the parish of Caddo, owns the other half; that said succession was administered by Jno. W. Smith, and that the said Jno. W. Smith, adm'r as aforesaid, has filed his final account, as appears by mortuary proceedings in succession of said Wm. W. Smith, dec'd.

Petitioners represent that they wish a partition of all of the assets belonging to said succession between themselves and the said James F. Smith; that said partition can be made in kind.

The premises considered, petitioners pray that the said James F. Smith be cited to answer this petition; that a commission
60 issue for inventory and appraisement of property and assets of succession to serve as basis of partition, & that a commission issue to some duly qualified notary public to make partition of said assets, and prays for all orders and decrees necessary & for general relief.

NUTT & LEONARD.

I accept service of foregoing petition, waive citation & time, & consent to the partition.

JAMES F. SMITH.

District Court, Caddo Parish.

JOHN BROWN, Tutor, *et al.* vs. JAMES F. SMITH. } No. —.

In this case, by reason of the law and the evidence, it is ordered, adjudged, and decreed that the prayer of within petitioner- be granted and that there be a partition in kind of all the property belonging to succession of W. W. Smith, deceased, between the plaintiffs and defendant, plaintiffs to have one-half and defendant one-half of said property. It is further ordered that commissions issue to C. W. Lewis, recorder & *ex officio* notary public of said parish, directing him to take an inventory and appraisement of said property and to make a partition in kind of said property,
61 and that Jno. W. Smith and Jos. B. Smith be appointed experts to assist said notary public in making said partition.

Done and signed at office this January 7th, A. D. 1868.

R. J. WRIGHT, *Clerk.*

Endorsed: No. 7779. John Brown, tutor, *et al. vs.* Jas. F. Smith, pet'r for partition. Filed January 7th, 1868. S. C. Wright, dep. clk.

To the honl. the judge of the 10th judicial district of the State of La., holding sessions of court in and for the parish of Caddo:

The petition of John Brown, tutor of Robert N. Smith & John L. Smith, minor children of John K. Smith, deceased, late of the State of Kentucky, and of Wm. L. Smith & Elizabeth A. Smith, wife of

M. Duvall, authorized and assisted by her said husband, all residents of the State of Kentucky, with respect represents that they recently, viz., on 7th Jan'y, 1868, instituted suit in your honbl. court against Jas. F. Smith, and in said suit a decree was rendered directing a partition of all the property belonging to succession of
62 W. W. Smith, dec'd, formerly of said parish of Caddo, between petitioners and said Jas. F. Smith, who are the heirs of said W. W. Smith, all of which will appear by reference to record in said suit No. 7779 on your honor's docket.

Petitioners represent that in accordance with said decree a partition has been regularly made by C. W. Lewis, recorder & *ex officio* notary public of said parish, a procès verbal of which is herewith presented.

Petitioners pray that said partition so made be homologated, approved, and made the judgment of the court, and that petitioners be declared the owners of the property therein allotted to them, and that said Jas. F. Smith be declared owner of the property therein allotted to him.

They ask that the said James F. Smith, of the State of Kentucky, now in the parish of Caddo, be cited to answer hereto, and that after all legal notices and delays judgment be rendered as prayed for above; they ask for all orders and decrees necessary in the premises and for general relief.

NUTT & LEONARD,
Att'ys for Petitioners.

I accept service of within petition, waive citation and time, and join in the prayer of said petition.

JAMES F. SMITH.

63 District Court.

JOHN BROWN, Tutor, *et al.* } No. 7779.
vs.
JAS. F. SMITH. }

By reason of the law and the evidence, it is ordered, adjudged, and decreed that the prayer of within petition be granted, and that the partition of the property belonging to the succession of W. W. Smith, dec'd, between the heirs thereof, made by C. W. Lewis, recorder and *ex officio* notary public, on the 13th day of January, A. D. 1868, a procès verbal of which has been filed in office of clerk of district court of said parish, be, and the same is hereby, homologated, approved, and made the judgment of the court, and that the within-named petitioners, as children of J. K. Smith and heirs of said W. W. Smith, be, and are hereby, declared the owners of the property allotted to them in said partition, and that Jas. F. Smith be, and is hereby, declared owner of the property allotted to him in said partition.

It is further ordered and decreed that the costs of effecting partition be borne equally by said petitioners, heirs of J. K. Smith, and by said James F. Smith.

Done and signed in chambers on this the 13th day of January, A. D. 1868, in parish of Caddo.

JAS. I. WEEMS,
61 *Judge* 10 *Jud. Dist.*

Endorsed: No. 7779. John Brown, tutor, *et al. vs.* Jas. F. Smith. Petition. Filed Jan'y 14th, 1868. R. J. Wright, clerk.

CLERK'S OFFICE, CADDO PARISH, LA.

I hereby certify that the foregoing five pages contain true and correct copies of the original petition for and judgment decreeing partition; also petition for and judgment homologating said partition, as the same now appear on file and of record in my office.

Given under my hand and seal of office, at Shreveport, Louisiana, on this the 20th day of July, A. D. 1886.

[SEAL.] W. G. BONEY,
Deputy Clerk 1st Judicial Dist. of La.

Endorsed: No. 99. U. S. C. C., W. D. of La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* Exhibit F. Petition for partition in case of Brown, tutor, *et al.* Offered in evidence on behalf of pl'ffs. Filed Feb'y 28th, 1891. J. B. Beattie, clerk.

65 EXHIBIT "G."

To the hon. the judge of the 18th judicial district of the State of Louisiana in & for Caddo parish:

The petition of Jno. W. Smith, of the parish & State aforesaid, with respect represents that the late W. W. Smith has recently died, leaving a large amount of property, consisting of land, negroes, merchandise, &c., in the parish of Caddo; that the heirs of said Smith, dec'd, are James F. Smith, brother of dec'd, and minor children & heirs of John K. Smith, dec'd, represented by their mother, Annie Smith, née Boswell, widow of said John K., dec'd brother, all of the county of Shelby, in the State of Kentucky; that petitioner is a near relative of the dec'd & of his said heirs & is willing to take charge of the succession until the heirs can be heard from & their wishes made known in reference to the estate.

The premises considered, he prays that notice be given of his application for the appointment of counsel of absent heirs, for an inventory & appraisement of the property, for all orders and decrees necessary, & after legal delay that he be appointed curator of the succession, & for general relief.

CRAIN & NUTT, *Att'ys.*

Let due notice be given of the foregoing application by publication in a newspaper according to law & let a commission
66 issue to make an inventory of said succession & let W. O. Crain be appointed attorney to represent the absent heirs.

Done & signed, at office, this 25th day of Oct'r, 1858.

N. E. WRIGHT, *Clerk.*

I accept the above appointment.

W. O. CRAIN.

CLERK'S OFFICE, CADDO PARISH, LA.

I hereby certify that the above and foregoing is a true and correct copy of the original petition of Jno. W. Smith to be appointed curator of the succession of W. W. Smith, dec'd, No. 716 on the probate docket of the 1st dist. court of La. in and for Caddo parish, as the same now appears on file and of record in this office.

Given under my hand and official seal, at Shreveport, La., this 23rd day of February, A. D. 1886.

ALLEN V. WILSON,
Deputy Clerk 1st District Court of La.

[SEAL.]

Endorsed: No. 99. United States circuit court, western district of Louisiana. Petition of John W. Smith to be appointed curator, etc. Exhibit G. Offered in evidence on behalf of pl'ffs. Filed February 28th, 1891. Exhibit "G." J. B. Beattie, cl'k.

67

EXHIBIT "H."

STATE OF LOUISIANA, }
Parish of Caddo. }

In District Court.

Succession of W. W. SMITH. No. 716.

By reason of the law and the evidence, there being no opposition, it is ordered, adjudged, and decreed that the final account filed by John W. Smith, administrator of said succession, on the 2sd day of July, 1867, be, and same is hereby, homologated, approved, and made the judgment of the court.

It is further ordered that said Jno. W. Smith, as adm'r, have judgment against said succession for the sum of three thousand three hundred and thirty-six $\frac{4}{100}$ dollars, balance due him as shown by said account. It is further ordered that said John W. Smith be discharged from the further administration of said succession, and that his bond as such administrator be cancelled.

Done and signed at office this August 3rd, 1867.

R. J. WRIGHT, *Clerk.*

Endorsed: No. 716. Succession of W. W. Smith. Judgment homologating final account. Filed August 3rd, 1867. R. J. Wright, clerk.

CLERK'S OFFICE, CADDO PARISH, LA.

68 I hereby certify that the foregoing is a true and correct copy of the original judgment homologating the final account of and discharging John W. Smith from the administration of the succession of W. W. Smith, dec'd, No. 716 on the docket of the 1st judicial district court of La., as the same now appears on file and of record in this office.

Given under my hand and official seal, at Shreveport, La., on this 22sd day of July, A. D. 1886.

W. P. FORD,
Clerk 1st Jud'l Dist. Court of La.

[SEAL.]

Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* Exhibit "H." Judgment homologating final account of Jno. W. Smith. Offered in evidence on behalf of pl'ff. Filed Feb'y 28th, 1891. J. B. Beattie, clerk.

69 EXHIBIT "I."

Know all men by these presents that I, James F. Smith, of the county of Shelby, State of Kentucky, do constitute and appoint Jno. W. Smith, of the parish of Caddo, State of Louisiana, my true and lawful attorney to represent me in the State of Louisiana, hereby giving my said agent full power, for me and in my name, to sue for, recover, — receive all property, rights, and credits to which I may be entitled, and, further, to lease and sell or dispose of any and all property belonging to me in the parish of Caddo, and to sell all and any property which I may receive from the succession of my dec'd brother, the late W. W. Smith, hereby giving him full power to lease or sell all and any of said property and to give title to the same as fully as I could do if personally present, and on such terms as he may deem right and proper, and I hereby ratify and confirm all the acts of my said attorney in the premises.

Witness my hand this 6th day of December, 1858.

JAMES F. SMITH.
JNO. W. SMITH.

In presence of—
JOS. B. SMITH.
B. LOGAN.

70 CLERK'S OFFICE, CADDO PARISH, LA.

I hereby certify that the within and foregoing is a true and correct copy of the original mandate from J. F. Smith to Jno. W. Smith as the same now appears on file and of record in my office.

Given under my hand and seal of office, at Shreveport, La., on this the 28th day of February, A. D. 1887.

[SEAL.] W. G. BONEY,
Dy Clerk & ex Officio Dy Recorder.

Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et als. vs.* Jno. C. Brown, receiver, *et als.* Mandate from J. F. Smith to Jno. W. Smith. Exhibit "I." Offered in evidence on behalf of pl'ffs. Filed Feb'y 28th, 1890. J. B. Beattie, clerk.

71 EXHIBIT "J."

To the hon. judge of the 1st dist. court of Louisiana, held in and for Caddo parish:

The petition of Mrs. Elizabeth W. Smith (widow), a resident of Shelby county, in the State of Kentucky, with respect represents that she herewith presents the last will and testament of James F.

Smith, of Kentucky & county of Shelby, where his will was duly admitted to probate in January, A. D. 1871, all of which will fully appear by a certified copy of said will and judgment of probate, duly certified to, hereto annexed and made part hereof.

Premises considered, your petitioner prays that said will may be duly registered in this court and full faith and credit given to it, and for all other prayers, orders, & decrees, necessary and general relief.

WISE & HERNDON,
Att'ys for Petitioner.

In this case, it being established that the testament and last will of James F. Smith has been duly proved before a competent judge of Shelby county, in the State of Kentucky, it is ordered, adjudged, and decreed that the same be, and is hereby, registered and made the judgment of this court.

72 Done and signed at chambers April 28th, 1887.

S. L. TAYLOR,
Dist. Judge.

I, James F. Smith of the county of Shelby & State of Kentucky do make and order this as my last will and testament to wit:

I give and devise to my beloved wife Elizabeth W. Smith all of my estate of every description, real and personal to be used and enjoyed by her upon the following terms and conditions to wit:

1st. She shall without unreasonable delay pay all my just debts and funeral expenses after my death.

2sd. I authorize and empower her, at her discretion to sell and convey any part of my real estate.

3rd. It is my will that she shall, as she may from time to time be able make such advancements to our children as they may grow up as she can spare. In making such advancements she shall make each child equal as near as may be, and she shall first make the younger children equal to the advancement received by our older children, provided she may think it best and advisable so to do—otherwise she may withhold an advancement from any child for such time as she may think best.

73 4th. After the death of my said wife it is my will that the residue of my estate not disposed of by my wife, shall be equally divided among all my children or their issue, if any be dead.

And in making such division each child shall account for all advancements made to such child, either by myself or by my wife.

I have charged each child with such advancement as I have made to each in a book I keep for that purpose, and will in the future enter such other advancements as I may make.

It is my will that my wife shall settle up all my business without qualifying as executrix & without being required to make an

inventory of my estate, or any settlement with the court of the business of my estate.

Given under my hand this 27th day of January, 1870.

JAMES F. SMITH.

Witnesses:
JAMES L. CALDWELL.
R. T. OWEN.

Kentucky, Shelby County Court, *set.*, January Term, 1871.

An instrument of writing purporting to be the last will
74 and testament of James F. Smith, deceased, was this day produced *the* court and proven by the oath of James L. Caldwell and R. T. Owen, the two subscribing witnesses thereto; whereupon said instrument is ordered to be recorded as and for the last will and testament of said James F. Smith, deceased.

Att.: JOHN T. DAVIS,
Clerk Shelby County Court.

STATE OF KENTUCKY, } *set:*
County of Shelby, }

I, Andrew J. Stephens, clerk of the county court for the county and State aforesaid, certify that the foregoing is a true and correct copy of the last will and testament of James F. Smith, deceased, together with the order admitting the same to probate, as it appears from the records now on file in my office.

Att.: A. J. STEPHENS,
Clerk Shelby County Court.

STATE OF KENTUCKY, } *set:*
Shelby County Court, }

I, Joseph P. Force, presiding judge of the Shelby county court, do hereby certify that A. J. Stephens, whose genuine signature ap-
pears to the foregoing certificate, is and was at the date
75 thereof clerk of the county court in and for the county and State aforesaid, duly elected and qualified according to law; that his certificate is in due form of law, and that all his official acts as such are entitled to full faith and credit in judicature and thereat.

Given under my hand & private seal, having no official seal, this 11th day of January, 1887.

JAS. P. FORCE, [SEAL.]
Presiding Judge of Shelby County Court, Kentucky.

STATE OF KENTUCKY, } *set:*
County of Shelby, }

I, A. J. Stephens, clerk of the county court for the county and State aforesaid, certify that Jas. P. Force, whose genuine signature appears to the last foregoing certificate on the reverse side of this page, is the duly elected, qualified, and commissioned presiding judge of the Shelby county court; that his commission is now on file in my office, and that he was elected on the 2nd day of August,

1886, and his term of office will expire on the 3rd day of September, 1890.

Given under my hand and official seal this 11th day of January, 1887.

A. J. STEPHENS,
— Shelby County Court.

76 Copy.
Att.:
A. J. STEPHENS, *C. S. C. C.*

CLERK'S OFFICE, CADDO PARISH, LA.

I hereby certify that the above and foregoing is a true & correct copy of the original records in the succession of James F. Smith, deceased, as the same now appears on file and of record in this office.

Given under my hand and official seal, in the city of
[SEAL.] Shreveport, La., on this the 28th day of February, A. D. 1889.

W. P. FORD,
Clerk & ex Officio Recorder.

Endorsed: No. 99. United States circuit court, western district of Louisiana. R. N. Smith *et al. vs.* John C. Brown, receiver, *et als.* Petition & order registering will of Jas. F. Smith. Exhibit "J." Offered in evidence and filed on behalf of plaintiffs. Feb'y 28th, 1891. J. B. Beattie, clerk.

77 EXHIBIT "K."

No. 98. An act to incorporate the city of Shreveport, define its limits, and provide for its better police and municipal government.

New boundaries of municipal corporation.—SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana, in General Assembly convened, That all of that district of country contained within the following limits, to wit: From where the half mile running north through section (35) thirty-five would strike if continued, Cross bayou on the north or west bank; thence south on said line to the centre of section two (2) thence east to the half-mile corner of section six (6), township seventeen (17), range thirteen (13), west; thence north to the northwest corner of said section six; thence east on the township line to the east bank of Bayou Pierre; thence along said bayou across Red river, thence up east bank of Red river to a point opposite the north bank of Cross bayou; thence across Red river to the northwest bank of Cross bayou, thence up the north bank of said bayou to point of starting, shall be included within the corporate limits of the city of Shreveport.

Style and powers of corporation.—SEC. 2. Be it further enacted, etc., That the inhabitance of the city of Shreveport, laid out
78 as above, are hereby constituted and declared to be a corporation and body politic, in fact and law, by the name and style

of "The City of Shreveport" and by the same name shall have perpetual succession, shall be capable of suing and being sued and of prosecuting and defending in all courts all actions and matters whatsoever; may purchase, receive by donation and hold property of all kinds within and without the limits of the city; also, may have and use a common seal.

Government of city, in whom vested.—SEC. 3. Be it further enacted, etc., That the government of the city of Shreveport and the administration of its affairs shall be vested in a mayor and four administrators to wit one of finance, one of improvements, one of public accounts, one of assessments, and said mayor and administrators shall be elected or appointed, as hereinafter provided and shall form the council of the city of Shreveport.

Appointment or election of mayor and administrators.

The governor shall by and with the advice and consent of the senate appoint the mayor and the four administrators, who shall hold their offices until the first Monday of November, 1872, or until their successors are elected and qualified. On the first Monday of November, 1872, there shall be an election for administrators of finance and assessments, and every two years thereafter, and on the first Monday of November, 1873, there shall be an election for mayor, the administrators of improvements and public accounts; and every two years thereafter said officers, when elective, shall be elected at large by the qualified voters of the city of Shreveport, as constituted by this act. The mayor and administrators, before entering upon the duties of their offices, respectively, shall take and subscribe, before the court having probable jurisdiction in the parish of Caddo or before the judge thereof in chambers the oath prescribed by article 109 of the constitution of this State, and (that they) will faithfully perform the duties and discharge the obligations imposed upon them by this act, and, with the exception of the mayor (they) shall moreover give bond, as hereinafter more particularly prescribed and directed.

First meeting of administrators and delivery to them of papers, property, etc.—SEC. 4. Be it further enacted, etc., That on the second Monday following the day of their appointment or election the council shall hold their first meeting at the usual place of such meeting until a city hall shall be erected, when the meeting shall be held there, at which the mayor and the administrators of departments elect, having presented and filed their certificates of election and qualification, as herein provided, shall enter upon the discharge of their duties, as specified in this act, and their predecessors shall turn over to them all books, papers, property, money and accounts pertaining to their offices and to the city of Shreveport.

Vacancies in administration, how filled.—SEC. 5. Be it further enacted, etc., That should a vacancy occur at any time after the first day of January, 1872, in the office of mayor or administrator of a department by death, resignation or otherwise, more than three months preceding the expiration of his term of office, the council

shall at their first meeting after the occurrence of said vacancy, order an election for a successor to fill the same, of which notice shall be given in the official journal ten days prior to said election: provided, that all vacancies occurring by death, resignation (proviso) or failure to qualify prior to the first day of January, 1873, shall be filled by appointment by the governor, as provided in section four of this act. In case of a vacancy in the office of mayor, or in case of his illness or temporary absence, the administrator of the department of finance shall act as mayor *pro tempore* until a successor is duly appointed or elected and qualified, or during said sickness or temporary disability occurring in the office of
81 any administrator the mayor shall designate another administrator to act in his stead *ad interim*. And all officers herein provided for shall hold their offices until their successors are duly elected and qualified.

Duties of mayor.—Sec. 6. Be it further enacted, etc., That the mayor shall be the chief executive officer of the city; he shall affix the seal of the corporation to all its official acts; he shall see that the laws and ordinances be properly and faithfully executed; he shall be *ex officio* justice and conservator of the peace; he shall have general supervision of all matters relating to the discipline and efficiency of the police, the protection of the public and the private property, the preservation of public order and peace, and the enforcement of the city ordinances relative thereto, the houses of refuge and correction, and lighting the city; he shall call extra meetings of the council whenever he shall deem the same necessary, or whenever three members of the same shall, in writing, stating the object thereof request him to do so; he shall from time to time lay before the council a full statement of the affairs of the city. It shall be his duty to report to the council all officers and persons employed by the city who fail to perform their
82 duty or commit any act for which they should be removed from office, and may in his discretion suspend any such officer or employé until the action of said council to whom he shall report said suspension at their first meeting thereafter; he shall preside at the meetings of the council, but shall have no vote therein, except when there is a tie, in which case he shall have the casting vote; he shall sign and publish all ordinances and resolutions passed in due form by the council, and such ordinances and resolutions shall thereupon have the force of law; he shall have general superintendence over the departments of administration, and shall lay before the council every month the monthly reports hereinafter required to be made to him by said departments. His term of office when elected, shall be for two years. He shall receive a salary of twelve hundred dollars per annum, payable monthly on his own warrant, countersigned by the administrator of public accounts, and such a per centum of the fines assessed against offenders against the city ordinances as the council may direct. He shall be permitted to appoint a clerk at such a salary as the council may authorize, and he shall exercise all the powers heretofore vested in

the mayor of the city of Shreveport under existing laws, not
83 inconsistent or in conflict with this charter.

Departments.—SEC. 7. Be it further enacted, &c., That in the administration of the government and affairs of the city, there shall be in addition and subordinate to the executive powers of the mayor, four separate departments, the heads of which shall be known as the administrators of said departments, and shall have the administration and especial control of the same *subject*, subject to the limitations imposed by this act or other laws or the ordinances or resolutions of the council, to wit:

Department of finance, and duties of the administrator thereof.—First. A department of finance, which shall have general superintendence of all matters relating to the finances of the city of Shreveport and the receipt and disbursement of the same; he shall receive and collect all moneys, bills receivable, dues and assets belonging to the corporation, and shall deposit the same daily in such bank as the council shall elect as the fiscal agent of the corporation, as hereinafter provided, keeping a separate deposit account for each specific fund, on account of which deposit is made; shall keep correct accounts of all indebtedness of the city, and make all disbursements for account of the same by checks on said bank, but
84 shall make no payment or disbursement unless the claim, bill or account for the same shall have been audited by the administrator of the department of public accounts and be authorized by ordinance or resolution of the council, and the warrant therefor shall be duly numbered, indorsed and filed in said department; shall keep correct account of the resources, revenue and disbursements of the corporation, which shall at all times be open to the inspection of the mayor and members of the council; shall regulate the collection of all taxes, licenses and dues which may be imposed by the council; shall prescribe the mode and form of keeping the corporation books and accounts in every department created by this act, and shall be vested with, and perform, such other functions and duties as may from time to time be prescribed by the council.

Department of improvements and duties of administrator thereof.—Second. A department of improvements, which shall have general superintendence of all matters relating to the streets, sidewalks, pavements and wharves, and the construction, cleansing and repairing the same; the construction and repairing of bridges and the drainage of the city; the superintendence of the water works, school-houses, hospitals, asylums, markets, railroads, canals, weights and measures, the fire department and manufactures, and
85 shall be vested with and perform such other functions and duties as may from time to time be prescribed by the council.

Department of public accounts and duties of the administrator thereof.—Third. A department of public accounts, which shall have general superintendence of all contracts entered into by the city; shall keep a record of all ordinances making appropriations for general or special claims, shall issue warrants on the department of finance for the payment of claims the said warrants to be consecu-

tively numbered, corresponding to the number of vouchers upon which they are issued; and shall specify the account or fund upon which they are drawn: shall, in the months of January and July of each year, lay before the council a report of the claims and accounts against the city warranted for during the preceding six months, with a full detail of the names of the persons to whom issued, the amount thereof, the number of the warrant and the number and date of the ordinance or resolution authorizing the same. The report shall also embrace a statement of the indebtedness of the city, showing in detail all outstanding obligations, their date, amount, to whom and for what issued, when due, and under what ordinances and resolutions authorized. It shall also contain
86 estimates for the receipts and expenditures for the current six months. No warrants shall be drawn by said department on the department of finance unless there are funds in this department to meet the same, and the administrator of this department shall be vested with, and perform such other functions and duties as may be prescribed by the council, and heretofore vested in the controller of the city of Shreveport under existing laws not in conflict or inconsistent with this act.

Department of assessments and duties of the administrators thereof.—Fourth. A department of assessments, which shall have general superintendence of the assessment of all property in the city of Shreveport, real or personal, for taxation, of the imposition of licenses on professions, trades and occupations, necessary to produce revenue sufficient to carry on the city government and pay outstanding debts and contingent expenses, and shall be vested with, and perform such other functions as may be prescribed by the council.

Report of administrators, when made; salaries.—SEC. 8. Be it further enacted, etc., That the administrator of the foreign departments shall at the end of every month, render to the mayor a written report of the administration of that department during that
87 month, their actual and their respective condition. They shall each receive an annual salary of six hundred dollars payable monthly upon their own warrants approved by the mayor, and shall not be allowed any other compen-
Offices, when open. sation or fee whatever. They shall keep their offices open daily, Sundays and legal holidays excepted, for the transaction of business, during such hours as the council shall direct.

Organization of departments and appointment of officers.—SEC. 9. Be it further enacted, etc., That the council shall organize the departments established by the foregoing section, regulate the number of clerks and officers to be employed by each department and the amount of their salaries; said clerks and officers shall be recommended for appointment by the administrators of said departments respectively, and be appointed by the council; they may be suspended by said heads of departments respectively, at pleasure, and in case of such suspension it shall be reported to the council at its first meeting thereafter, together with the cause thereof. The coun-

cil may remove, by a vote of a majority of the members any of said clerks or officers for incompetency, neglect of duty, malfeasance in office, and when reported by the heads of departments, when the services of such officer or employee be no longer necessary to the public interest.

88 Power of council to pass by-laws and ordinances relative to.—SEC. 10. Be it further enacted, etc., That the council shall have full power and authority to make and pass such by-laws and ordinances as are necessary and proper.

Peace and good order.—First. To regulate and preserve the peace and good order of the city, and to provide for and maintain its cleanliness and sanitary condition, not inconsistent with any law relative thereto.

Improvements.—Second. To regulate and make improvements to the streets, public squares, wharves, and other public property, and to provide for the lighting and watering of the same and to order and direct the ditching, filling, opening, widening, and continuing of any streets; and, if for such purposes the land of any private person or body corporate is necessary to be had, the said city council shall have the right and power of purchasing the same at a reasonable price, or cause the same to be expropriated according to the manner and formalities prescribed by existing laws upon the subject; to regulate the proportion and to make and repair all common sewers, drains, canals, public roads, levees, dykes, causeways and bridges, notwithstanding any superintendence which might

89 be set up by any corporation or individual over such works; to determine the completion and dimensions of the pavements of the streets, to fix the squaring, and to prevent any encroachments upon, or stopping and obstructing the streets, public squares, levees, public roads, or any part of the port of Shreveport, and to order any object, whatever may be its value, which may encumber the said places or prevent and embarrass the free use of the same, to be removed or sold for whom it may concern, in the same manner and after such advertisements as shall be required by such regulations.

Cleaning banks of the river, etc.—Third. For cleaning the banks of the river or other navigable streams within the limits of the city; for the reopening of such ancient natural drains as have been obstructed by the owners of the adjacent lands, or the filling up of any water-course which is not navigable, for the purpose of carrying the public highways over the same; provided, that no injury be occasioned thereby to the neighboring inhabitance.

Collection of taxes etc.—Fourth. To prescribe and collect rates of levee dues and wharfage, and to designate the place for anchoring and mooring steamboats and other water craft in the port of Shreveport, and to regulate and maintain the public peace on the

90 same while in the limits of the city of Shreveport, every year lay an equal and uniform tax upon all real and personal property in said city, as prescribed, and under the limitations imposed in this act for the ensuing year, which said tax shall be due and payable at the office of the department of finance from the first day of March to the twenty-first day of July, inclusive,

and at its first regular meeting in December and on the same day annually thereafter, to impose an annual license tax on trades, professions and callings, as herein prescribed, said license to expire on the thirty-first day of December, in the year in which it was obtained, and which license tax shall be due and payable, at the office of the finance department from the first day of January to the twenty-eighth day of February, inclusive.

Estimate of municipal expenses and publication thereof.—SEC. 11. And be it further enacted etc., That the council shall once in ev-ry twelve months, before fixing and deciding upon the amount of taxes and licenses to be assessed for the ensuing year, cause to be made out a detailed estimate, exhibiting the various items of liabilities and expenditures, including requ-site amount of contingent expenses during said year, and shall cause the same to
91 be published for at least ten days in the official journal of the city; and such rate of taxation, not exceeding one dollar and seventy-five cents ($1.75) on ev-ry hundred dollars of valuation, shall thereafter be fixed and assessed, as, together with other revenues of the city, may be necessary to meet said estimated liabilities and expenditures.

Adoption of estimate tantamount to an appropriation.—The adoption of said detailed estimate, shall be considered as the appropriation of the amount therein stated, for the purpose therein stated, and the administrator of public accounts shall not audit, nor shall the administrator of finance draw or sign any check, upon the fiscal agent thereof, for any claims, unless an appropriation therefor has been duly made in accordance with this act.

Tax a lien in preference to all other privileges.—SEC. 12. Be it further enacted etc., That the taxes assessed and levied by virtue of this act on the property, real or personal, of any person or corporation, are hereby declared to be a lien and privilege upon said property, to date from the first day of August of the year for which they may be assessed, any alienation thereof or incumbrence thereon notwithstanding; and said lien or privilege shall exist in favor of the city of Shreveport, for the respective amount of taxes
92 assessed, until the same shall be fully paid; and the same shall be paid in preference to all mortgages and incumbrences other than taxes due the State; and if the license tax, as herein provided, shall not have been paid by the person liable therefor on or before the first day of March in each and every year the city of Shreveport, upon affidavit made by any officer thereof, that said tax, commonly known as a license, has not been paid by the person liable therefor, shall have a lien in the nature of a lessor's privilege upon the personal property of the person so in default, and, on application made, a writ of provisional seizure shall issue, out of any court of competent jurisdiction, in favor of said city, and said property so seized provisionally shall be sold in satisfaction of said tax.

Taxes and dues, when exigible, and how collectible.—SEC. 13. Be it further enacted etc., That all tax licences and dues imposed by the city of Shreveport, or due to the same, and not paid on the thirty-

first day of July, shall be exigible after thirty (30) days' publication in the official journal, when the amount claimed is five hundred dollars ($500) or less, in the parish court, when over five hundred dollars ($500), in the district court. And the only process necessary for judgment upon said claims, bill or dues, shall be said
93 publication. Upon the production and filing of said claims, bills or dues, in the appropriate and competent court, and the production of proof of publication, judgment shall be immediately rendered in favor of said city and against the delinquent tax-payer or debtor. It shall be the duty of the administrator of the department of finance to file said bills and proof in the appropriate court immediately after said publication, and to superintend said proceedings, under the advice of the city attorney, and collect the proceeds of the judgment and writ in the hands of the clerk or sheriff; that the clerks of said courts shall be allowed and permitted to charge one dollar and no more, for all proceedings had, including judgment and execution, in each case filed. And the sheriff shall be allowed a sum not exceeding one dollar for all processes placed in his hands in each case, the same not to include the regular commissions for collecting the same or costs of keeping and advertising; and upon the prayer of the city, through its proper representative, any court of competent jurisdiction shall enjoin the said person or persons, so liable to pay a license tax, and who shall refuse or neglect to pay the same, from continuing to carry on such business or profession until he shall have paid the same
94 and all costs and charges for the recovery and enforcement of the claim therefor.

Property seized to be sold without appraisement.—SEC. 14. Be it further enacted, etc., That all property seized and levied upon for non-payment of taxes, shall be sold without appraisement and for cash, or so much cash as will satisfy the tax, interest and costs; provided, that for any amount over that the defendant may direct the sale to be made on credit, and all property sold under this act shall be liable to redemption, by the owner, his heirs, legal representatives or assigns, for and during two years from and after the day of sale by paying in cash to the purchaser, or party holding under him, an amount being fifty per cent. over and above the amount of the tax and all costs incurred by the sale and the amount of all taxes paid since the sale.

Property, within what time redeemable.

Contracts for public works, how awarded.—SEC. 15. Be it further enacted, etc., That all contracts for public works or for materials or supplies ordered by the council, when the same exceeds five hundred dollars ($500), shall be offered by the administrator of the department to which such contract pertains, at public auction, and given to the lowest bidder who can furnish security satisfactory to the council, or the same shall, at the discretion of the council be
95 advertised for proposals to be delivered to the administrator of the department to which such contract pertains, in writing, sealed, and to be opened by said administrator in the presence

of the mayor and administrator of finance, and given to the person making the lowest proposal therefor, who can furnish security satisfactory to the council; provided that the council shall, in either case, have the right to reject all bids or proposals.

Provi-ed.

Proceedings relative to the banquetting of the streets.—SEC. 16. Be it further enacted etc., That whenever one-fourth of the owners of real property fronting upon any unbanquetted street in the city of Shreveport, shall, by petition signed by the petitioner or petitioners and addressed to the council of said city, ask for the banqueting of said street or any portion thereof setting forth the character and quality of said banqueting, said council shall cause said petition to be published in English in the official journal of said city for and during four weeks; and if at the expiration of said publication so made of such petition, a majority of the owners of real property fronting on said street or streets or said portion thereof, shall not, by memorial signed by the memorialist or memorialists and addressed to said council, object to the same, the said council shall by resolution or otherwise, order said banquetting to be made in accordance with lines and levels to be furnished by the city surveyor, and the whole costs of said banquet/s so made, as aforesaid shall be borne by the owner or owners of real property fronting on said banquet/s in equal proportions, according to the running foot frontage, and, in the event of the owner or owners of any portion of said property so banquetted refusing or neglecting to pay the proportion so due for more than sixty days, the same shall constitute a lien and privilege upon said property until the said sum so due shall be paid; provided, the proper proof of the performance of the work is made before a competent court, when the same shall be recorded in the office of the recorder of mortgages.

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Expense of banquetting, by whom payable.

Proviso.

Paving opening and widening of streets, etc.—SEC. 17. Be it further enacted, etc., That the city council may, whenever it shall deem it to the public interest, by ordinance provide for the paving, opening or widening of any street or streets or any part thereof, or in the construction of a city hall, markets and other structures of public necessity and utility, the cost of which shall be paid by the city provided, that whenever the amount or cost of paving said streets or erecting the structures aforesaid, from time to time, exceeds the amount of funds in the city treasury, then the common council are hereby authorized and empowered to issue bonds of the city, running forty years, with interest coupons attached, and bearing interest at the rate of, and not exceeding, ten per centum, payable semi-annually either at the cities of New Orleans, Shreveport or New York, at the option of the holder thereof, and said council shall have power to dispose of said bonds in such manner as they may deem for the best interest

Proviso relative to the issue of bonds.

97

of the city, the proceeds of which shall be used solely for the purpose for which they shall be issued. They shall also by ordinance provide for levying a tax, from time to time, in order to provide for the payment of the principal and interest of said bonds; provided, that, whenever the city council of Shreveport desires to use any particular patent pavements for the purpose of paving or improving the streets or any part of the streets of said city, then the council of said city are hereby authorized, by resolution or ordinance, to fix the price to be paid for such pavement, and to let the same, under contract, to the licensee or assigns of said patented pavement.

Proviso relative to patent pavements.

Repairs of streets and banquettes.—SEC. 18. Be it further enacted, etc., That all paved and improved streets in the city of Shreveport shall be kept in repair by the city, and all paved banquettes shall be kept in repair by the owners of real property fronting thereon.

98

Officers of corporation not to be interested in contracts.—SEC. 19. Be it further enacted, etc., That no administrator of department or other officer of the corporation, or person in the employ of the corporation, shall be directly or indirectly interested in any work, business or contract which is paid or to be paid by the city, or by an assessment levied by the council, nor in the purchase of any real estate belonging to the corporation, or which shall be sold for taxes or assessments, or be the surety of any person having a work, contract or business with said city, for the performance of which security may be required, nor shall he be a surety on the official bond to be given by any other administrator of department. Any administrator offending against the provisions of this article, shall be liable to both actual and exemplary damages recoverable upon his bond and against him and his sureties *in solido*, and he and they shall also be so liable to both actual and exemplary damages for any other malfeasance or corruption in office, of which he may, while in office be guilty, and which may be ascertained by the judgment of any court of competent civil jurisdiction in a suit upon said bond against such administrator and his sureties in the name and on behalf of the city of Shreveport.

Penalty for being so interested and how enforced.

99

Regular meetings.—SEC. 20. Be it further enacted etc., That the council shall hold a regular meeting on some stated day of every week. Their sessions shall be public; their proceedings shall be duly recorded, and shall be published in an official journal selected by them; three members shall be requisite to constitute a quorum for doing business; no ordinance levying a tax, making an appropriation — over five hundred dollars ($500), or providing for the purchase or sale of real estate, shall be passed except by a majority of the council, nor shall a final vote on the same be taken except at a regular

Quorum.

Appropriations of over $500, to be approved by a majority of the council.

meeting, subsequent to a previous regular meeting, at which the same shall have been introduced and passed to its second reading, and the said ordinance, together with the vote on the same and the names of the members voting yea or nay, shall be published in the official journal except in case of invasion, insurrection, pestilence or inundation.

Bond of administrators and how approved.—Be it further enacted etc., That no administrator of department shall be qualified to take his seat, or to exercise the functions of the office to which he has been elected or appointed until he shall have given bond in the sum of five thousand dollars, with solvent and sufficient sureties, resident in the State of Louisiana, for the faithful performance of his duties the solvency and sufficiency of which bond and sureties shall be determined in the manner herein provided, to wit: that within thirty days after receiving his certificate of appointment or election, said member of council shall appear before a judge of any court of record in this State with his bonds and sureties, and it shall be the duty of the judge of said court to examine and question under oath the sureties so offered, and the said judge shall decide as to the sufficiency and solvency of the sureties, and approve or decline to approve the bond so tendered. These proceedings shall have preference over all other business before the court. They shall be public, and be entered upon the minutes of the court, and the clerk shall furnish a certified copy *copy* of the same under the seal of the court, for which he shall be entitled to charge two dollars; a copy of said proceedings shall be recorded in the office of the recorder of mortgages of the parish where the bond is given, and the inscription shall operate as a judicial mortgage against all the property of the principal for the amount for which he is bound, and in default of said member furnishing said bond and the approval thereof by said court and his undertaking, notwithstanding, to perform any functions of said office he shall be considered guilty of a misdemeanor, punishable by fine not exceeding five thousand dollars, and all acts done by him under color of said office shall be absolutely null and void. Should any of the administrators appointed or elected fail to qualify as herein provided for, the mayor shall immediately order an election, in the manner as provided for in this act, to fill the vacancy or vacancies thus created, except in such cases as are herein provided to be filled by appointment.

Record of proceedings relative thereto, and effect thereof.

Penalty for intrusion into office of administrator.

Vacancies, how filled.

Fiscal agent of the city.—Be it further enacted, etc., That at the first meeting of the council, or as soon thereafter as practicable, they shall elect, *viva voce*, one of the banks of the city as fiscal agent of the city of Shreveport, in which shall be deposited daily by the administrator of finance all moneys, bonds and notes collected by

him on account of the city, who shall open and keep special accounts, as the council may prescribe, and shall pay from the funds so deposited all checks which

Accounts of administrator of finance.

102 may be drawn by the administrator of the department of finance, and shall make weekly reports to the council of the amounts deposited to the credit of the said several accounts, the amounts paid out from each, and the balance remaining on hand. The council may change its fiscal agent whenever the public interests may warrant.

Secretary of council and his duties and salary.—SEC. 21. Be it further enacted etc., That it shall be the duty of the council, at its first regular meeting after its induction into office, or as soon thereafter as practicable, to elect a secretary, whose duty it shall be to keep a correct record of all proceedings of the council; to certify to the mayor all ordinances and resolutions passed by the council, and to perform such other duties as may be prescribed by the council, who shall hold his office for one year, unless sooner removed, as is provided for in this act, and who shall receive a salary to be fixed by the council, not to exceed five hundred dollars per annum; also a city attorney, learned in the law, who shall be the legal adviser of the corporation in all matters in which legal advice may be necessary, and shall represent the corporation in all judicial proceedings and actions to which it may be a party, or in which it may have an interest; and shall in all cases when required by the mayor or any administrator of department, furnish a written opinion of the legality or constitutionality of any law or ordinance, to — submitted to or pending before the council, or as to any questions involved in the discharge of their respective duties; he shall hold his office for a term of one year unless sooner removed, as provided for in this act, and shall receive a salary to be fixed by the common council, not to exceed twelve hundred dollars per annum; he shall be allowed no extra fee or compensation, nor shall any other attorney be appointed to assist him, unless by a vote of a majority of the members of the council, and shall be empowered to employ one or more clerks, as the council may deem necessary and allow; also, a city surveyor, whose duty it shall be to furnish the council or any administrator of department with all plans, estimates and other information pertaining to the protection, repair, construction of any public works or improvements, and, after completion of the same, to report the manner in which the same shall have been executed, and shall perform such other duties as may be assigned to him by the council; he shall hold his office for one year; unless sooner removed, as provided in this act, and shall receive a salary not to exceed five dollars per day when actually employed, to be fixed by the council.

City attorney and his duties, salary and term of office.

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City surveyor, his duties and compensation, etc.

104

City dispensed from giving bond and security as a litigant.—

Be it further enacted, etc., That in all judicial proceedings where by law bond and security are required from litigants, the city of Shreveport shall be dispensed from furnishing bond or security or making affidavit.

Requisition of title to public property.—Be it further enacted, That all right, title and interest of the city of Shreveport to all lands, tenements, hereditaments, bridges, ferries, streets, roads, wharfs, markets, stalls, levees and landings, places, buildings and other property of whatever description and wherever situated, and with all goods, chattles, money, effects, debts, dues, demands, bonds, obligations, judgments, liens, actions, and rights of actions, books, accounts and vouchers, be and they are hereby vested in the city of Shreveport, as incorporated by this act; provided, that all the estates, income, funds, or property of any description, now held in trust by said city of Shreveport, or which shall have been specially pledged or affected by the payment of any debt, shall be held by the city of Shreveport under this act, upon and for the same uses, trusts, limits, limitations, charities and conditions, as the same are now held, and all other indebtedness or liabilities of the city of Shreveport, whether in the form of bonds, notes, interest coupons, cash warrants, or any other species of obligations whatever, shall be assumed and paid by the city of Shreveport, as constituted and incorporated by this act, and the said city is declared liable therefor; and upon the organization of the council of the city of Shreveport, as provided for in this act, all the powers, rights, privileges and immunities, possessed and enjoyed by the mayor and trustees of the city of Shreveport, as *provided for in this act, all the powers, rights, privileges and immunities, possessed and enjoyed by the mayor and trustees of the city of Shreveport as* at present constituted, shall cease and terminate, and be vested in the city of Shreveport as established by this act.

Proviso.

Duty of officers under former municipal charter.—SEC. 22. Be it further enacted, etc., That upon the organization of the council by this act, it shall be the duty of the mayor and trustees, treasurer and controller, and all other officers of the city of Shreveport, to forthwith turn over and deliver to the mayor and council, as created and constituted by this act, all books, papers, records, documents, moneys, bonds, notes obligations, evidences of indebtedness, and every description of movable property whatsoever belonging to the said city of Shreveport, and in the use of or under the control of any of their representative departments, and that, if any person holding under the city of Shreveport as constituted previous to the passage of this act, have possession or control of any property or effects of any kind whatsoever belonging to the said city, and shall refuse or neglect to forthwith deliver up the same to the mayor and council created by this act, he shall be deemed guilty of a misdemeanor and punished by a fine not exceeding one thousand dollars and imprisonment not exceeding six months.

SEC. 23. Be it further enacted, etc., That all laws or parts of laws in conflict with this act be and the same are hereby repealed.

SEC. 24. Be it further enacted, etc., That this act shall go into effect from and after its passage.

(Signed) GEO. W. CARTER,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant Governor and President of the Senate.

Approved April 27, 1871.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy.

GEO. E. BOVEE,
Secretary of State.

Endorsed: United States circuit court, W. D. La. R. N. Smith *et al. vs.* Jno. C. Brown, rec'v'r, *et al.* No. 99. Exhibit "K." Offered in evidence on behalf of plaintiffs and filed Feb'y 28th, 1891. J. B. Beattie, clerk.

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EXHIBIT I.

Defendant's Evidence.

Petition.

To the judge of the 18th judicial district of the State of Louisiana, parish of Caddo:

The petition of the State of Louisiana, herein represented by the undersigned district attorney, specially empowered by R. C. Wickliffe, governor, to institute this suit, with respect represents that the legislature of the said State of Louisiana passed a law, which was approved by P. O. Hebert, governor, on the 30th day of April, A. D. 1853, entitled "An act authorizing the register of the land office to sell certain shallow lakes in the State of Louisiana," which said act was promulgated by publication in the official State paper on the 23rd day of June, A. D. 1853, and that said act provided that the register of the land office, at Baton Rouge, be authorized to sell all the shallow lakes in this State, the areas of which has been ascertained by surveys and which are susceptible of being reclaimed, wholly or in part, by draining or leveeing: Provided, that this act shall not apply to any swamp lakes in this State, provided said sale shall not be made until the lands have become the property of the State and been regally surveyed and the surveys been recognized by the State.

108 Petitioner represents that on the 14th day May, A. D. 1853, William H. Crenshaw, register of the land office at Baton Rouge, pretending to act under said law, sold to William W. Smith, of the parish of Caddo, who pretended, by his agent, Jno. S. Gooch, to purchase under said law the following-described lands, lying and being situated in the parish of Caddo and adjoining the town of

Shreveport, said lands at the time of said sales being shallow lakes, viz., Cross Lake, section 25, township 18, range 14, containing 21.18 acres, at one dollar and twenty-five cents per acre, for which *for which* a certificate of purchase and entry was delivered to said Smith, who is now in full possession of the same; also Silver Lake, section —, township 18, ranges 13 & 14, containing 186.57 acres, at one dollar and twenty-five cents per acre, for which a certificate of entry was issued to said Smith by L. J. Segur, register; but petitioner avers that the sale or entry of Silver Lake had been cancelled by W. H. Crenshaw, register, as appeared upon the records of the office on the 10th day of June, 1853, and of this act said Smith had due notice.

Now your petitioner alleges that said recited act of sale,
109 entry, and patent are null; that they were done without authority of law, and should be declared null & void by judgment of this court:

1st. Because the law under which said entries were made had not been promulgated at the date of said entries.

2nd. Because said lake had not at all the time of said entries been legally surveyed nor had the surveys been recognized by the State nor have they yet been.

3rd. Because the "patent" to Silver Lake was issued by L. J. Segur, register, in error of the fact that the law was not promulgated at the time of the entry, and also in error of the other fact that the said entry had been cancelled before the law had been promulgated; otherwise he would not have issued said "patent." Petitioner alleges the further ground why said sale and entries should be cancelled the fact that had said sales not been made before the promulgation of said law the same could have been sold for more — one dollar and a quarter per acre, to wit, for the sum of fifteen hundred dollars, and that should said sale, patent, and entries be now set aside they could be sold for twenty-five dollars per acre (98) or more. Petitioner further alleges that he has
made a legal tender to said Smith of the sum and interest he
110 paid for said lands, to wit, the sum of three hundred and thirty dollars, and demanded a surrender of said patent and certificate of entry that the same may be cancelled, which the said Smith has refused.

Prayer.

The premises considered, your petitioner prays that the said William W. Smith be cited to appear and answer hereto, and that judgment be rendered against him declaring the said certificate of entry and the said "patent" held by him to the said Cross and Silver Lakes lands null and void, and further that he be ordered to return them to the authorities of the State that they may be cancelled. Petitioner prays for all other orders, for costs, and for general relief.

(Sig.) HINTON SMITH,
Dist. Att'y 18th District.

Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Petition. Filed Dec'r 3d, 1857. (Sig.) A. H. Leonard. Recorded Dec'r 1st, 1860, in Book "J," pages 130 to 132. (Sig.) R. J. Wright, deputy clerk.

111 *Petition of Revival.*

District Court, Parish of Caddo, State of Louisiana.

STATE OF LOUISIANA *vs.* WM. W. SMITH. } No. 5135.

The undersigned, district attorney for the 18th judicial district, with respect represents that since the institution of the above-entitled case the defendant, W. W. Smith, is deceased, and that Jno. W. Smith has been, by order of this court, appointed the administrators of his succession.

Wherefore petitioner, adopting all the allegations and demands of the original petition, prays that the said John W. Smith be cited to defend this action, and further asks for service upon all other legal representatives, for costs and general relief.

(Sig.) HINTON SMITH,
Dist. Att'y 18th Dist. for the State of Louisiana.

Service accepted. Citation and time waived.

(Sig.) L. M. NUTT,
Att'y for Adm'r.

Endorsed: No. 5135. State of Louisiana *vs.* W. W. Smith. Petition of revival. Filed Febr'y 14th, A. D. 1859. (Sig.) E. H. Pennal, dep'ty clerk.

112 *Answer.*

STATE OF LOUISIANA *vs.* W. W. SMITH. } No. 5135.

And now comes John W. Smith, administrator of the succession of W. W. Smith, deceased, and for answer denies all allegations in plaintiff's petition *and* herein admitted.

He says he is the owner of all the right, title, and interest of Louisiana to the land claimed by virtue of a patent hereto annexed and made part hereof; that he purchased said land from the State of Louisiana according to law and is owner of all the right and title thereof.

He prays that this suit be dismissed at plaintiff's costs and for trial by jury.

(Sig.) LANDRUM, *For Def't.*

Endorsed: No. 5135. State of La. *vs.* W. W. Smith. Answer. Filed April 29th, 1859. E. H. Pennall, dep'ty clk.

113 *Amended Answer.*

STATE OF LOUISIANA } No. 5135.
vs.
W. W. SMITH. }

The defendant, adopting all the allegations of his original answer, with leave of the court amends his said answer by praying for trial by jury.

(Sig.) GEO. WILLIAMSON,
HODGE & AUSTIN, *Att'ys.*

Endorsed: 5135. State of La. *vs.* W. W. Smith. Amended answer. Filed Nov. 28th, 1859. (Sig.) E. H. Pennall, dep'ty clerk.

Verdict of the Jury.

We, the jury in the case of Louisiana against W. W. Smith, render verdict in favor of plaintiff, that the certificate and patent be annulled and delivered up.

(Sig.) WILLIAM A. LACEY, *Foreman.*

Endorsed: No. 5135. The State of Louisiana *vs.* W. W. Smith. Verdict. Filed Nov. 12th, 1860. (Sig.) E. H. Pennall, deputy clerk.

114 *Judgment.*

STATE OF LOUISIANA }
vs.
W. W. SMITH. }

In this case, by reason of the law and the evidence and the verdict of the jury, it is ordered, adjudged, and decreed that the certificates of entry made by W. H. Crenshaw, register, of Silver Lake, section —, township 18, ranges 13 & 14, amounting to 186.57 acres, at $1.25 per acre, and also of Cross Lake, section 25, township 18, range 14, quantity 21.18 acres, at $1.25 per acre, in favor of W. W. Smith, be annulled, avoided, and delivered up; and it is further ordered, adjudged, and decreed that the patent issued on the 24th day of February, 1855, in favor of W. W. Smith, the defendant, for Silver Lake, in the parish of Caddo, township 18, ranges 13 & 14, containing 186.57 acres and issued by L. J. Sigur, register of the land office, be annulled and avoided and taken up, and that defendant pay costs.

Done and signed in open court on this the 24th day of November, 1860.

(Sig.) W. B. EGAN,
Judge 17th Dist., Presiding.

Endorsed: No. 5135. The State of La. *vs.* W. W. Smith. Judgment. Filed Nov. 24th, 1860. (Sig.) E. H. Pennall, deputy clerk.

115 *Motion for Appeal.*

STATE OF LOUISIANA }
vs.
W. W. SMITH. }

The defendant, John W. Smith, administrator for W. W. Smith, deceased, respectfully represents that the judgment in the foregoing cause will work irreparable injury to the succession *if* (of) said deceased unless the same be revoked. Wherefore he prays that he be granted a devolutive and suspensive appeal from said judgment, returnable to the supreme court of the State of Louisiana on the second Monday of July next, 1861, at its session at the town of Monroe, parish of Ouachita. He prays for all further necessary orders, decrees, and notices in the premises and for general relief.

(Sig.) GEO. WILLIAMSON, *Att'y.*

Endorsed: No 5135. State of Louisiana *vs.* W. W. Smith. Motion for appeal. Filed Nov. 24th, 1860. (Sig.) N. E. Wright, clerk.

116 MONDAY MORNING, *November 12th*, 1860—9 o'clock.

Court met pursuant to adjournment.

THE STATE OF LOUISIANA }
vs.
W. W. SMITH. }

And now come the parties and announce themselves ready for trial. Whereupon came a jury, to wit, M. Johnson, B. C. Tabor, M. T. J. Alston, S. Countz, W. C. Tyffe, T. B. Jordan, A. W. Marshall, H. Heffner, N. A. C. Hudson, David Stately, J. P. Harley, and W. A. Lacey, twelve good and lawful men of the parish of Caddo, sworn to well and truly try the issue joined between the State of Louisiana and the defendant, W. W. Smith, who, after hearing the evidence, argument of counsel, and charge of the court, returned here unto open court and upon their oaths do say:

We, the jury in the case of the State of Louisiana against W. W. Smith, render verdict in favor of plaintiff, that the certificate and patent be annulled and delivered up.

(Sig.) WILLIAM A. LACY, *Foreman.*

117 SATURDAY MORNING, *November 24th*, 1860—9 o'clock.

Court met pursuant to adjournment.

THE STATE OF LOUISIANA }
vs. } No. 5135.
W. W. SMITH. }

Motion for devolutive and suspensive appeal filed by defendant and granted and ordered by the court that the bond in case of a devolutive appeal be fixed at $200.00 and in case of a suspensive appeal according to law.

Whereupon it is ordered that the same be made returnable to the next term of the supreme court to be holden at the town of Monroe, Ouachita parish, La., commencing on the 2nd Monday of July, 1861. Plaintiff's counsel, being present, takes cognizence of the order of appeal and waives service of citation.

Appeal Bond.

STATE OF LOUISIANA, }
Parish of Caddo. }

STATE OF LOUISIANA }
vs. }
W. W. SMITH. }

118 Know all men by these presents that we, John W. Smith, administrator of the succession of W. W. Smith, deceased, as principle, and A. B. Levisee, as security, are held and firmly bound unto the State of Louisiana or to the governor thereof or his successors in office, plaintiff in the above-stated case, in the sum of two hundred and fifty dollars; for the payment of which we bind ourselves, our heirs and executors, *in solido* firmly by these presents.

Dated at Shreveport, in the State and parish aforesaid, on this the 7th day of Dec., 1860.

The condition of the above obligation is such that whereas John W. Smith has obtained an appeal from a certain judgment rendered adversely to him in the above-stated case, numbered 5135 on the docket of the district court of Caddo parish:

Now, if the said John W. Smith shall prosecute his said appeal to final judgment thereon and shall well and truly satisfy such judgment as may be rendered against him on said appeal, then this bond to be null and void; otherwise to remain in full force and effect.

(Sig.) J. W. SMITH,
Adm'r Est. W. W. Smith.

(Sig.) A. B. LEVISEE.

Endorsed: State of Louisiana *vs.* W. W. Smith. Appeal bond. Filed Dec'r 8th, 1860. N. E. Wright, clerk.

119 Supreme Court of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, *July 3rd*, 1890.

Extract from Minutes.

Supreme Court of Louisiana, Holding Sessions at Natchitoches.

Extract from the Minutes of Monday, August 13th, 1866.

On the 13th day of August, 1866, it being the 2nd Monday of the month, the day fixed by law for the session of the supreme court

of Louisiana for the fourth district, the court was opened at Natchitoches according to law.

Present: Hon. W. B. Hyman, chief justice; Hon. Z. Labauve, associate justice; Hon. Jas. G. Taliaferro, associate justice.

STATE OF LOUISIANA, App'ee,
vs.
W. W. SMITH, App't. } No. 53.

"Ans. filed. Case continued."

Supreme Court of Louisiana, Holding Sessions at Natchitoches.

Extract from the Minutes of Wednesday, August 11th, 1869.

On Wednesday, the 11th day of August, court met pur-
120 suant to adjournment; were present their honors John T. Ludeling, chief justice; J. G. Taliaferro, associate justice; W. W. Howe, associate justice.

STATE OF LOUISIANA, App'ee,
vs.
W. W. SMITH, App't. } No. 53.

"This case is dismissed by consent of counsels."

Supreme Court of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, *July 3rd*, 1890.

I hereby certify the foregoing to contain a true and complete extract from the minutes of the supreme court of the State of Louisiana, holding sessions at Natchitoches, dated Monday, August 13th, 1866, and Wednesday, August 11th, 1869. In testimony whereof I have hereunto set my hand and affixed the seal of this hon. court, at the city of New Orleans, this the 3rd day of July, A. D. 1890, and in the 114th year of the Independence of the U. S. of America.

LAURENS M. MARTIN,
Deputy Clerk.

121 Endorsed: No. 99. U. S. circuit court, western dist. of La. R. N. Smith *et als. vs.* John C. Brown, receiver, *et al.* Extract of minutes supreme court. Dismissal of suit in supreme court State of La. Exhibit I. Offered in evidence on behalf of def'ts. Filed Feb'y 28th, 1891. J. B. Beattie, clerk.

122 EXHIBITS II, III, IV.

U. S. Circuit Court, Western District of Louisiana.

R. N. SMITH *et als.* }
vs. } No. 99.
RECEIVERS OF T. & P. RY CO. }

Interrogatories addressed to William D. Wylie, of Dallas county, Texas, a material and competent witness on behalf of defendants, whose answers are to be used as evidence on trial hereof.

1st. State your age and present occupation.

2nd. Were you ever a resident of the State of Louisiana? If so, please state when and where you resided in that State.

3rd. Where were you residing when you left Louisiana, and when did you leave there?

4th. If, in answer to the third interrogatory, you say at Shreveport, please give the exact location of your residence in said city and when you began your residence there.

5th. Please examine the attached papers, purporting to be copies of application for homestead No. 683, receiver's certificate No. 17830, and patent from U. S. Government, and state if you are the person named.

123 6th. Please state the location of the land described in attached papers — the name or names by which it was usually called or known by at Shreveport.

7th. Did you at any time reside on said land; if so, when did you first make your residence on it?

8th. How did you come to make your residence on said land? Did you possess the land for others or as owner?

9th. Did you exercise ownership and dominion over the whole tract?

10th. How long were you in possession of said land as owner?

WISE & HERNDON,
Att'ys for Defendants.

Cross-interrogatories.

1st. If you state that you ever were in actual possession of the land in dispute or any part thereof, please state how much of the same you had enclosed when your enclosure was made and when you entered same.

2nd. If you state that you ever actually resided on said land, state when you built a house or houses thereon, where you
124 built said house or houses, — how long you resided in said house or houses—between what dates.

3rd. Were not said houses or house on the hills overlooking "Duck Lake" or "Cross Lake"?

4th. While you claimed possession of "Duck Lake" did not T. W. Jones dispute your possession & claim possession of part of

same? Was not there some litigation between you & said Jones in regard to same in district or parish court of Caddo parish?

5th. When did you leave Shreveport for Texas to reside there?

6th. If you answer that you ever resided on or in "Duck Lake" describe exactly the locality of your residence and state who were your nearest neighbors.

A. H. LEONARD,
LAND & LAND,
Att'ys for Pl'ffs.

We waive proof of capacity of the officer taking the answers other than his seal of office.

LAND & LAND,
A. H. LEONARD,
Att'y- for Pl'ffs.

125 *Certificate No.* 17830.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting:

Whereas William D. Wylie, of Caddo parish, Louisiana, has deposited in the General Land Office of the United States a certificate of the register of the land office at Natchitoches, Louisiana, whereby it appears that full payment has been made by the said William D. Wylie according to the provisions of the act of Congress of the 24th of April, 1820, entitled An act making further provision for the sale of the "public lands," for the lot numbered fifteen south of the bayou of section twenty-five, in township eighteen of range fourteen west, in the district of lands subject to sale at Natchitoches, Louisiana, containing eighteen acres and ninety-six hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said William D. Wylie:

126 Now know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said William D. Wylie and to his heirs the tract above described:

To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said William D. Wylie and to his heirs and assigns forever.

In testimony whereof I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of December, in the year of our Lord one thousand eight hundred

and seventy-four, and of the Independence of the United States the ninety-ninth.

By the President:

U. S. GRANT,
By S. D. WILLIAMSON, *Secretary.*
L. K. LIPPINCOTT,
Recorder of the General Land Office.

[L. S.]

127

Recorded vol. 31, page 431.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original patent issued by the United States of America to W. D. Wylie as the same now appears on record in my office.

Given under my hand and seal of office this 20th July,

[SEAL.] 1887.

W. P. FORD,
Clerk 1st Jud. Dist. of La.

Endorsed: United States to W. D. Wylie. Patent.

128 Duplicate receiver's receipt No. 683. Application No. 683.

Homestead.

RECEIVER'S OFFICE,
NATCHITOCHES, LA., *February 24th*, 1872.

Received of W. D. Wylie, of Caddo parish, the sum of five dollars and ninety-five cents, being the amount of fee and compensation of register & receiver for the entry of lot No. 15 south of bayou, of section twenty-five (25), in township eighteen (18), of range fourteen (14) W., under the acts of Congress approved May 20th, 1862, & March 21st, 1864, entitled "An act to secure homesteads to actual settlers on the public domain."

J. JULES BOSSIER, *Receiver.*

85.95.

18.96 acres *@* 82.50.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original duplicate receiver's receipt issued to W. D. Wylie by J. Jules Bossier, U. S. receiver, as the same now appears on file and of record in my office.

[SEAL.] Given under my hand and seal of office this 20th day of July, 1887.

W. P. FORD,
Clerk Dist. Court, Caddo Parish, La.

129 Endorsed: Duplicate receiver's receipt to W. D. Wylie.

No. 17830.

RECEIVER'S OFFICE AT NATCHITOCHES, LA., *Oct. 19th*, 1872.

Received from William D. Wylie, of Caddo parish, Louisiana, the sum of forty-seven dollars and forty cents, being in full for the lot No. 15 south of the bayou, of section No. 25, in township No. eighteen (18), of range No. fourteen (14) west, containing eighteen acres and ninety-six hundredths at $2.50 per acre.

J. JULES BOSSIER.

$47.40.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original receipt of J. Jules Bossier, receiver, as the same now appears on file and of record in my office.

[SEAL.] Given under my hand & seal of office this 20th July, 1887.

W. P. FORD,
Clerk Dist. Court.

130 Endorsed: U. S. receipt of receiver to W. D. Wylie.

R. N. SMITH *et al.* } No. 99.
vs.
RECEIVERS OF T. & P. RY CO. }

Suit pending in the U. S. circuit court, western dist. La.

Answers and depositions of William D. Wylie, of Dallas county, Texas, to the accompanying direct and cross interrogatories propounded to him in the above-entitled cause, taken before Jeff. N. Miller, notary public in and for Dallas county, Texas, in accordance with the accompanying commission.

Answers of the Witness, William D. Wylie.

To the first interrogatory he answers: Fifty-one years old; real-estate agent.

To the second interrogatory he answers: Yes; from 1865 to 1880, in Shreveport, Caddo parish.

To the third interrogatory he answers: Shreveport, La; 1880.

131 To the fourth interrogatory he answers: From about June 1st, 1872, until about November, 1880, I resided on the tract of land known as Wylie's subdivision of lot No. 15, sec. 25, T. 18 north, range 14, known also as Duck Lake. I began my residence there about the latter part of May or first of June, 1872.

To the fifth interrogatory he answers: I have examined the attached papers purporting to be certificates of entry and patent and am the party named.

To the sixth interrogatory he answers: The land is located on

what is known as Cross bayou, adjacent to the town of Shreveport, and was commonly known as Duck Lake.

To the seventh interrogatory he answers: I resided on the land continuously from 1872 until 1880.

To the eighth interrogatory he answers: I found that lot No. 15, sec. 25, T. 18, R. 14, known as Duck Lake, was vacant land and subject to entry in the United States Land Office. I entered the land under act — 1862, and commuted my entry under the 8th
132 section, and I entered it for myself and exercised ownership until after I commuted and completed my title, when I sold a portion of it.

To the ninth interrogatory he answers: I exercised ownership over the entire tract until I sold a portion of it after I commuted.

To the tenth interrogatory he answers: I was in possession of the portion I occupied for over eight years as owner.

X. To the first cross-interrogatory he answers: I first built my house on the west side, on what is known as McNeil St., about the 1st of June, 1872, and enclosed about two acres. I afterwards moved my house to east side of McNeil St. and enclosed there, I think, about one acre.

X. To the second cross-interrogatory he answers: About June 1st, 1872; resided there until about November, 1880.

X. To the third cross-interrogatory he answers: The first house I built was on the side of a small elevation, near what was known as the ditch, on the west or south side of McNeil St. I afterwards built on the side of the hill on east or north side of McNeil
133 St. The improvements and houses were on lot 15, sec. 25, T. 18, R. 14, known as Duck Lake.

X. To the fourth cross-interrogatory he answers: Mr. Jones disputed my entry. There was some litigation. Mr. Jones, I think, dismissed the case, acknowledging my title, and we were friends and neighbors afterwards.

X. To the fifth cross-interrogatory he answers: In the fall of 1880.

X. To the sixth cross-interrogatory he answers: I resided in the eastern or southeastern portion of lot 15, known as Duck Lake. Mr. Bonnet (I think this is his name) was my near neighbor; also Mrs. Holaman, Mrs. Henry; Col. W. S. Haven and T. W. Jones were my most immediate neighbors.

W. D. WYLIE.

STATE OF TEXAS, }
County of Dallas. }

I, Jeff. N. Miller, notary public in and for Dallas county, Texas, do hereby certify that the foregoing answers of William D. Wylie, the witness before named, were made before me and were sworn to and subscribed before me by the said witness.

Given under my official signature and seal this ninth day of July, A. D. 1890.

134 [SEAL.]

JEFF. N. MILLER,
Notary Public, Dallas Co., Texas.

Endorsed: No. 99. U. S. circuit court, W. dist. La. R. N. Smith *et als., vs.* Receivers of T. & P. R'y Co. Deposition of W. D. Wylie & exhibits. Exhibits II, III, IV. Offered in evidence on behalf of defendants and filed Feb'y 28th, 1891. J. B. Beattie, clerk.

135 EXHIBIT 5.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day before me, John N. Hicks, clerk and *ex officio* deputy recorder and *ex officio* notary public in and for the said parish, duly appointed and sworn, came and appeared William D. Wylie, of Shreveport, La., who declared that he does by these presents grant, bargain, sell, convey, and deliver, with full guarantee of title and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property presently conveyed, unto Thomas P. Hotchkiss and Laban L. Tomkies, of same residence, present, accepting sale, an individual two-thirds (⅔) interest in and to the following-described property, to wit, lot No. fifteen (15) south of the bayou, of section No. twenty-five (25), in township eighteen (18), of range No. fourteen (14) west, according to receiver's receipt No. 17830, this day filed for record in the recorder's office of this parish:

To have and to hold said described property unto said purchasers, their heirs and assigns, forever.

This sale is made for the consideration of the sum of three
136 thousand dollars, the receipt of which is hereby acknowledged. The certificate of mortgages *that* receipts are hereby waived by the parties.

Done and passed at my office, in said parish of Caddo, in presence of E. M. Sturgess and F. A. Williams, competent witnesses, on this the twentieth day of November, A. D. eighteen hundred and seventy-two (1872).

WILLIAM D. WYLIE.
T. P. HOTCHKISS.
LABAN L. TOMKIES.
JOHN N. HICKS,
Deputy Recorder & ex Officio Notary Public.

Attest: E. M. STURGESS.
F. A. WILLIAMS.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true and correct copy of the original act of sale as the same now appears on file and of record in my office.

Given under my hand and seal of office, at Shreveport, La., this 20th day of July, 1887.

[SEAL.]

W. P. FORD,
Clerk Dist. Court.

137 Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et al. vs.* John C. Brown. W. D. Wylie to Hotchkiss & Tomkies. Sale of lots. Filed and recorded November 20, 1872. John N. Hicks, deputy recorder. Exhibit 5. Offered in evidence on behalf of defendants. Filed Feb'y 28th, 1891. J. B. Beattie, cl'k.

EXHIBIT 6.

STATE OF LOUISIANA, }
Parish of Caddo, 10th Judicial District. }

W. D. WYLIE
vs.
L. L. TOMKIES, Successor of T. P. Hotchkiss. } No. 9823.

In the case, by reason of the law and the evidence and by reason of the concurrence of all parties concerned, and upon due
138 proof and showing that the forms of law have been complied with—

It is ordered, adjudged, and decreed that the partition herein made by L. E. Carter, notary public, and the experts, J. G. McWilliams, David Barnes, and John Caldwell, whereby is apportioned to W. D. Wylie block "A" and block "B" and lot No. ten (10), in block "C," and fractional block eighteen (18), and to L. L. Tomkies is apportioned blocks "G," "F," & "C," excepting lot No. ten (10), in block "C," which is assigned to W. D. Wylie, and to the succession, T. P. Hotchkiss, is apportioned blocks "H," "E," and "D," all as per plat of Wylie's subdivision of lot fifteen (15), sec. twenty-five (25), township eighteen (18) north, range fourteen (14) west, be, and the same is hereby, approved, homologated, and made final, each party paying one-third of the costs of partition.

Done, read, and signed in open court this 22d day of November, 1878.

ALECK BOARMAN,
Dist. Judge 10th Judicial District.

A true copy.
Attest: ALLEN V. WILSON, *Dy Clk.*

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original act of sale as the same now appears on
139 file & of record in my office.

Given under my hand & seal of office this 23rd July,
[SEAL.] 1887.

W. P. FORD,
Clerk 1st Jud. Dist. of La.

Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et als. vs.* John C. Brown, receiver, *et al.* W. D.

Wylie *vs.* L. L. Tomkies and succession of T. P. Hotchkiss. Copy of judgment homologating partition. Filed and recorded November 22d, 1878. E. W. Durant, recorder. Exhibit 6. Offered in evidence on behalf of def't and filed Feb'y 28th, 1891. J. B. Beattie, clerk.

140 EXHIBIT 7.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day, before me, John N. Hicks, a notary public in and for the said parish, duly appointed, commissioned, and sworn, came and appeared William D. Wylie, a resident of the city of Shreveport, said State and parish, who declared that he does by these presents grant, bargain, sell, convey, and deliver, with full guarantee of title and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property presently conveyed, unto John McKeller, of same residence, present, accepting this act, the following-described property, to wit, lot No. (5) five, in block "B," in Wylie subdivision of lot No. fifteen (15), in section twenty-five (25), township eighteen (18), of range No. fourteen (14) west, in the city of Shreveport, said State and parish, as per map of said subdivision recorded in recorder's office of said parish in Book of Conveyances "X," page —:

To have and to hold said described property unto said purchaser, his heirs and assigns forever.

This sale is made for the consideration of the sum of twenty-eight dollars, the receipt of which is hereby acknowledged.

141 The certificate of mortgages and tax receipts are hereby waived by the parties and evidence of the payment of taxes produced.

Done and passed at my office, in said parish of Caddo, in presence of C. C. Rule and R. J. B. Swearingen, competent witnesses, on this the fourteenth day of April, A. D. eighteen hundred and seventy-nine (1879).

W. D. WYLIE.
JOHN McKELLAR.

Attest: C. C. RULE.
R. J. B. SWEARINGEN.

JOHN N. HICKS,
Notary Public.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original act of sale as the same now appears on file & of record in my office.

[SEAL.] Given under my hand and seal of office this 23rd day of July, 1887.

W. P. FORD,
Clerk 1st Judicial Dist. Court of La.

Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* W. D. Wylie to John McKellar. Sale of lot 5, bl'k B, subd'n —. Filed
142 and recorded April 14th, 1879. E. W. Durant, notary public. Exhibit 7. Offered in evidence and filed on behalf of def'ts. Feb'y 28th, 1891. J. B. Beattie, cl'k.

EXHIBIT 8.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day, before me, John N. Hicks, a notary public in and for the said parish, duly appointed, commissioned, and sworn, came and appeared John McKellar, a resident of said State and parish, who declared that he does by these presents grant, bargain, sell, convey, and deliver, with full guarantee of title and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property presently conveyed, unto William D. Wylie, of same residence, present, accepting this act, the following-described property, to wit, lot No. five (5), in block "B," of Wylie's subdivision of the city of Shreveport, La., recorded in recorder's office of said parish in *block* "X," page 307; to have and to hold said described property unto
143 said purchaser, his heirs and assigns forever. This sale is made for the consideration of the sum of fifty dollars cash. The certificate of mortgages and tax receipt are hereby waived by the parties.

Done and passed at my office, in said parish of Caddo, in presence of A. W. O. Hicks and M. Bernstein, competent witnesses, on this the 28th day of July, A. D. eighteen hundred and seventy-nine (1879).

JOHN McKELLAR.
W. D. WYLIE.

Attest: A. W. O. HICKS.
M. BERNSTEIN.

JOHN N. HICKS,
Notary Public.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original act of sale as the same now appears on file & of record in my office.

[SEAL.] Given under my hand & seal of office this 23rd day of July, 1887.

W. P. FORD,
Clerk 1st Jud. Dist. Court of La.

144 Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* John McKellar to William D. Wylie. Sale of lot 5,

Wyly subdivision. Filed and recorded July 28th, 1879. E. W. Durant, clerk & *ex officio* recorder. Exhibit 8. Offered in evidence on behalf of defts & filed Feb'y 28th, 1891. J. B. Beattie, clerk.

EXHIBIT 9.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day, before me, John N. Hicks, a notary public in and for the said parish, duly appointed, commissioned, and sworn, came and appeared William D. Wylie, a resident of the city of Shreveport, said State and parish, who declared that he does by these presents grant, bargain, sell, convey, and deliver, with full guarantee of title, with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property presently conveyed, unto George M. Norman, of same residence, present, accepting this act, the following-described property, to wit, lots Nos. four, five, and six (4, 5, & 6), in block "B" of Wylie's subdivision of the city of Shreveport, La., recorded in Book "X," page 307, of the recorder's office of said parish:

145

To have and to hold said described property unto said purchaser, his heirs and assigns forever.

This sale is made for the consideration of the sum of eighty-six & $\frac{50}{100}$ dollars, forty-one and $\frac{50}{100}$ dollars cash, the receipt of which is hereby acknowledged, and the balance in one note of said purchaser, dated with this act, to order of this vendor, due at six months, with 8 % per annum interest thereon from date, and paraphed "*ne varietur*" of this date by me, notary, to identify it herewith.

In event of suit for collection of said note it is agreed that said purchaser shall pay all costs of same, including 5 per cent. attorneys' fees, on amount sued for, and in order to secure the payment of said note and costs a special mortgage and vendor's — is hereby stipulated on said lots Nos. four and five (4 & 5). Said lot No. 6 is exempt from this mortgage in favor of said vendor, said purchaser agreeing not to alienate, deteriorate, or encumber said property to the prejudice of this mortgage.

This mortgage waiving benefit of apprais-ment and im-

146 porting confession of judgment. The certificate of mortgages is hereby waived by the parties.

Done and passed at my office, in said parish of Caddo, in presence of H. F. Doll and M. Bernstein, competent witnesses, on this the 28th day of July, A. D. eighteen hundred and seventy-nine (1879).

W. D. WYLIE.
GEO. W. NORMAN.

Attest: H. F. DOLL.
M. BERNSTEIN.

JOHN N. HICKS,
Notary Publick.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original act of sale as the same now appears on file & of record in my office.

Given under my hand and seal of office this 23rd day of July, 1887.

[SEAL.]

W. P. FORD,
Clerk 1st Jud. Dist. Court of La.

Endorsed: No. 99. United States circuit court, western district of La. R. M. Smith *et al. vs.* John Brown, receiver, *et als.* Wm. D. Wylie to George M. Norman. Sale of lot in Wylie subdivision. Filed and recorded July 28th, 1879. E. W. Durant, clerk
147 & *ex officio* recorder. Exhibit 9. Offered in evidence and filed on behalf of def'ts. Feb'y 28th, 1891. J. B. Beattie, cl'k.

EXHIBIT 10.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day, before me, Lewis E. Carter, a notary public in and for the said parish, duly appointed, commissioned, and sworn, came and appeared George M. Norman, of Shreveport, Caddo parish, La., who declared that he does by these presents grant, bargain, sell, convey, and deliver, with full guarantee of title and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property presently conveyed, unto the New Orleans Pacific Railway Company, herein represented by R. H. Lindsay, the following-described property, to wit, lots (4, 5, & 6) four, five, & six of block "B," Wylie subdivision, fronting on McNeil street, in the city of Shreveport, Caddo parish, State of Louisiana:

To have and to hold said described property unto said purchaser, heirs and assigns forever.

This sale is made for the consideration of the sum of one
148 hundred and fifty dollars cash, the receipt of which is hereby acknowledged.

The certificate of mortgages and tax receipt are hereby waived by the parties.

Done and passed at my office, in said parish of Caddo, in presence of J. H. Hargrove and R. J. B. Swearingen, competent witnesses, on this the 27th day of October, A. D. eighteen hundred and eighty-one.

GEO. W. NORMAN.
R. H. LINDSAY.
N. O. P. R. R. CO.

Attest: J. L. HARGROVE.
R. J. B. SWEARINGEN.

LEWIS E. CARTER,
Notary Public.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original act of sale as the same now appears on file & of record in my office.

Given under my hand & seal of office this 23rd day of
[SEAL.] July, 1887.

W. P. FORD,
Clerk of 1st Judicial Dist. Court of La.

149 Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et als. vs.* John C. Brown, receiver, *et al.* George M. Norman to N. O. P. Railway Co. Sale of lots 4, 5, & 6 of block B. Filed January 2*sd*, 1882. W. G. Boney, dep. clerk & *ex officio* recorder. Exhibit 10. Offered in evidence on behalf of defendants and filed February 28th, 1891. J. B. Beattie, cl'k.

EXHIBIT 11.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day, before me, Frederick Augustus Leonard, deputy clerk & *ex officio* dep. recorder and notary public in and for the said parish, duly appointed and sworn, came and appeared W. D. Wylie, of said parish and State, who declared that he does by these presents grant, bargain, sell, convey, and deliver, with full guarantee of title and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property presently conveyed, unto J. G. McWilliams, T.
150 H. Morris, and John R. Jones, all of said parish and State, the following-described property, to wit, lots nine (9), ten (10), eleven (11), twelve (12), thirteen (13), and fourteen (14), one (1), two (2), of block "B," and lots one (1), two (2), three (3), four (4), five (5), and six (6), nine (9), of block "A," and one acre lot No. ten of block "C," Wylie's subdivision of lot fifteen (15), of section twenty-five (25), of township eighteen (18), range fourteen (14), of Caddo parish, La., as per map recorded in Book "X," page 307, of the recorder's office of said parish:

To have and to hold said described property unto said purchasers, their heirs and assigns forever.

This sale is made for the consideration of the sum of eight hundred dollars cash in hand paid, the receipt of which is hereby acknowledged.

The certificate of mortgages and tax receipt are hereby waived by the parties.

Done and passed at my office, in said parish of Caddo, in presence of Samuel M. Morrison and Wm. R. Devoe, competent wit-

nesses, on this the 5th day of February, A. D. eighteen hundred and eighty-one (1881).

Interlineation made before signing.

W. D. WYLIE.
J. G. McWILLIAMS.
T. H. MORRIS.
JOHN R. JONES.

Attest: SAML M. MORRISON.
WM. R. DEVOE.

151 F. A. LEONARD,
Notary Public, Dep. Clerk, and ex Officio Dep. Recorder.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original act of sale as the same now appears on file and of record in my office.

Given under my hand and seal of office this 23rd day of July, 1887.

[SEAL.]

W. P. FORD,
Clerk 1st Jud. Dist. of La.

Endorsed: No. 99. United States circuit court, western district, La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* W. D. Wylie to McWilliams, Morris & Jones. Sale of lots. Filed and recorded February 5th, 1881. F. A. Leonard, dep. clerk and *ex officio* recorder, notary public. Exhibit H. Offered in evidence on behalf of def'ts and filed Feb'y 28th, 1891. J. B. Beattie, clerk.

152 EXHIBIT 12.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that before me, Lewis E. Carter, notary public in and for the said parish, duly appointed, commissioned, and sworn, came and appeared J. G. McWilliams, T. H. Morris, and John R. Jones, of said parish and State, who declared that they do by these presents grant, bargain, sell, convey, and deliver, with such title as they received from their vendor and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property presently conveyed, unto the New Orleans Pacific Railway Company, herein represented by R. H. Lindsay, the following described property, to wit, lots Nos. nine (9), ten (10), eleven (11), twelve (12), thirteen (13), & fourteen (14), one (1) & two (2), of block B; lots (1) one, two (2), three (3), four (4), five (5), six (6), and nine (9), of block "A," and one acre lot No. ten (10) of block C of Wylie's subdivision of lot fifteen (15), of section twenty-five (25), of township eighteen (18), range fourteen (14), of Caddo parish, Louisiana, as per map recorded in Book "H" of Conveyance-recorder's office of Caddo parish:

153 To have and to hold said described property unto said purchaser, — heirs and assigns forever.

This sale is made for the consideration of the sum of seven hundred & fifty dollars, payable as follows:

—— dollars cash in hand paid, the receipt of which is hereby acknowledged, and the balance in — note- of said purchaser, dated with this act, to order of this vendor, due ——.

The certificate of mortgages and tax receipt are hereby waived by the parties.

Done and passed at my office, in said parish of Caddo, in presence of John Murray and Rainey Carter, competent witnesses, on this the twenty-sixth day of October, A. D. eighteen hundred and eighty-one.

J. G. McWILLIAMS.
JOHN R. JONES.
THOS. H. MORRIS.
R. H. LINDSAY,
For N. O. P. R. R. CO.

Attest: JOHN MURRAY.
RAINEY CARTER.

LEWIS E. CARTER,
Notary Public.

STATE OF LOUISIANA, }
Parish of Caddo. }

154 I hereby certify that the above and foregoing is a true & correct copy of the original act of sale as the same now appears on file & of record in my office.

Given under my hand & seal of office this 23rd day of
[SEAL.] July, 1887.

W. P. FORD,
Clerk 1st Jud. Dist. Court of La.

Endorsed: No. 99. United States circuit court, western dist. La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* J. G. McWilliams T. H. Morris, & John R. Jones to N. O. Pacific Railway Co. Sale of 14 lots in Shreveport. Lewis E. Carter, notary public. Filed and recorded January 2nd, 1882. W. G. Boney, dep. clerk & *ex officio* recorder. Exhibit 12. Offered in evidence on behalf of defendants and filed Feb'y 28th, 1891. J. B. Beattie, clerk.

155 EXHIBIT 13.

STATE OF LOUISIANA, }
First Judicial District, Parish of Caddo. }

THE 9TH NATIONAL BANK }
vs. }
L. L. TOMKIES. }

Whereas I, John Lake, sheriff of the parish of Caddo, by virtue of a writ of *fieri facias* to me directed by the honorable the first ju-

dicial district court in and for the parish of Caddo, after having fulfilled and complied with all the legal requisites, did seize, on the 27th day of July, 1881, the following-described property, situated in the city of Shreveport, parish of Caddo, La., to wit, lots Nos. (1) one, (2) two, (3) three, (4) four, (5) five, (6) six, (7) seven, (8) eight, & (9) nine, of block "C," all of block "F," and all of block "G" of plat of Wylie's subdivision of lot (15) fifteen, section (25) twenty-five, township (18), range (14) fourteen west, as per map of said plat recorded in Book "X," page 307, and also as per judgment of partition, Book "X," page 331, of the recorder's office of Caddo parish, La.

And after all legal notices and delays I proceeded to advertise said before-described property for sale for cash, with the benefit of appraisement—

To wit, on the 3rd day of August, 1881, by advertisement
156 in the English language, announcing the sale to take place at the front door of the court-house, in the city of Shreveport, parish of Caddo, on Saturday, 3rd day of September, 1881; said advertisement as inserted and published in the "Shreveport Times" (a newspaper published in the city of Shreveport, La.), to wit, from the 3rd day of August, A. D. 1881, to the day of sale, being full 30 clear days from the date of the first notice given in said newspaper; and having further complied with and performed all the additional previous requisites, and after the said before-described property having been duly appraised, did expose the same at public sale at the front door of the court-house, in the city of Shreveport, La., on the said 3rd day of September, A. D. eighteen hundred and eighty-one (1881), between the hours of 11 o'clock a. m. and 4 o'clock p. m. I repaired to said court-house door and there, after first having read the writ of *fieri facias*, the advertisement thereof, also the certificate of the recorder of mortgages in and for the parish of Caddo showing amount of incumbrences thereon, then announcing the nature and description of said property, the terms and conditions of sale, I then proceeded to offer lots Nos. 1, 2, 3, 4, 5, 6, 7, 8,
157 & 9 of block "C" and all of block F of said Wylie's subdivision of lot (15) fifteen of said section 25, T. 18, R. 14 west, in said city, for sale for cash, with the benefit of appraisement, when at said offering R. H. Lindsay, representing the New Orleans and Pacific Railway Co., having bid the sum of two hundred and ten dollars for all of block F and the sum of one hundred and fifty dollars for lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, & 9 of block "C," making the sum of three hundred and sixty dollars, for the following-described property, to wit, lots Nos. (1) one, (2) two, (3) three, (4) four, (5) five, (6) six, (7) seven, (8) eight, and (9) nine of block "C" and all of block "F" of plat of Wylie's subdivision of lots (15) fifteen, section 25, township 18, range 14 west, as per map of said plat recorded in Book X, page 307, and also as per judgment of partition, Book X, page 331, of the recorder's office of Caddo parish, La., because the purchase thereof, said company being the highest and last bidder, the said before-described block F and block "C," except lot 10 of said block "C," was adjudicated to the said New Orleans and Pacific Railway Co. for said price and sum of three

hundred & sixty dollars cash, the receipt of which is hereby acknowledged:

158 Now, therefore, know all men by these presents that I, John Lake, sheriff of the parish of Caddo, in consideration of the premises and by virtue of the laws of the State in such cases made and provided, do sell and transfer the said before-described property to the said New Orleans and Pacific Railway Co. and all the right and title which the said L. L. Tomkies had in or to the said before-described block "F" and 9 lots of block "C;" to have and to hold the same unto said New Orleans and Pacific Railway Co., heirs and assigns forever.

In witness whereof I have hereunto signed my name, at Shreveport, in the parish of Caddo and State of Louisiana, this the 3rd day of September, A. D. one thousand eight hundred and eighty-one, and the hundred and sixth year of the Independence of the United States.

JOHN LAKE,
Sheriff of Caddo Parish, Louisiana.

Signed in presence of—
W. H. WISE.
ALLAN V. WILSON.

159 STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the within and foregoing is a true & correct copy of the original act of sale as the same now appears on file & of record in my office.

Given under my hand & seal of office this 23rd day of
[SEAL.] July, 1887.

W. P. FORD,
Clerk 1st Jud. Dist. Court of La.

Exhibit 13.

Endorsed: No. 99. United States circuit court, western district La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* From L. L. Tomkies, at sheriff sale, to N. O. and P. R. R. Co., September 3rd, 1881, $360.00. Filed and recorded May 18th, 1886. Allen V. Wilson, d'y clerk & *ex officio* d'y recorder. Offered in evidence on behalf of def'ts. Filed February 28th, 1891. J. B. Beattie, cl'k.

160 EXHIBIT 14.

STATE OF LOUISIANA, }
First Judicial District, Parish of Caddo. }

THE 9TH NATIONAL BANK }
vs. }
L. L. TOMKIES. }

Whereas I, John Lake, sheriff of the parish of Caddo, by virtue of a writ of *fieri facias* to me directed by the honorable the first ju-

dicial district court in and for the parish of Caddo, after having fulfilled and complied with all the legal requisites, did seize, on the 27th day of July, 1881, the following-described property, situated in the city of Shreveport, parish of Caddo, La., to wit, lots Nos. (1) one, (2) two, (3) three, (4) four, (5) five, (6) six, (7) seven, (8) eight, and (9) nine of block "C," all of block "F," and all of block "G," of plat of Wylie's subdivision of lot (15) fifteen, section (25) twenty-five, township (18) eighteen, range (14) fourteen west, as per map of said plat recorded in Book "X," page 307, and also as per judgment of partition, Book X, page 331, of the recorder's office of Caddo parish, La.

And after all legal notices and delays I proceeded to advertise said before-described property for sale for cash, with the benefit of appraisement, to wit, on the 3rd day of August, 1881, by ad-
161 vertisement in the English language, announcing the sale to take place at the front door of the court-house, in the city of Shreveport, parish of Caddo, on Saturday, 3rd day of September, 1881; said advertisement was inserted and published in the Shreveport Times (a newspaper published in the city of Shreveport, La.), to wit, from the 3rd day of August, A. D. 1881, to the day of sale, being full 30 clear days from the date of the first notice given in said newspaper, and having further complied with and performed all the additional previous requisites, and after the said before-described property having been duly appraised, did expose the same at public sale at the front door of the court-house, in the city of Shreveport, La., on the said 3rd day of September, A. D. eighteen hundred and eighty-one (1881), between the hours of 11 o'clock a. m. and 4 o'clock p. m. I repaired to said court-house door and there, after first having read the writ of *fieri facias*, the advertisement thereof, also the certificate of the recorder of mortgages in and for the parish of Caddo showing amount of incumbrences thereon, then announcing the nature and description of said property, the terms and considerations of sale, I then proceeded to offer
162 said property for sale for cash, with the benefit of appraisement, first, all of block "G" of said plat of Wylie's subdivision of said city, when at said offering of L. L. Tomkies, Sr., representing L. L. Tomkies, Jr., having bid the sum of seven hundred and sixty-one (761.00) dollars for the said before-described property, to wit, all of block "G" of plat of Wylie's subdivision of lot (15) fifteen, section (25) twenty-five, township (18) eighteen, range (14) west, as per map of said plat recorded in Book "X," 307, and also as per judgment of partition, Book X, 331, because the purchaser thereof, he being the highest and best bidder, the said before-described property, viz., all of block "G," was adjudicated to the said L. L. Tomkies, Jr., for the price and sum of seven hundred and sixty-one dollars cash, the receipt of which is hereby acknowledged:

Now, therefore, know all men by these presents that I, John Lake, sheriff of the parish of Caddo, in consideration of the premises and by virtue of the laws of the State in such cases made and provided, do sell & transfer the said before-described property to

the said L. L. Tomkies, Jr., and all the right and title which the said L. L. Tomkies, Sr., had in or to the said before-described
163 block "G" of Wylie's subdivision; to have and to hold the same — said L. L. Tomkies, his heirs and assigns forever.

In witness whereof I have hereunto signed my name, at Shreveport, in the parish of Caddo and State of Louisiana, this the 3rd day of September, A. D. one thousand eight hundred and eighty-one, and the hundred and 6th year of the Independence of the United States.

JOHN LAKE.
Sheriff of Caddo Parish, Louisiana.

Signed in presence of—
D. S. HALL.
JNO. C. ELSTNER.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the within & foregoing is a true & correct copy of the original act of sale as the same now appears on file & of record in my office.

Given under my hand & seal of office this 23rd day of July, 1887.

W. P. FORD.
Clerk 1st Jud. Dist. Court of La.

164 Exhibit 14.

Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* From L. L. Tomkies, at sheriff's sale, to L. L. Tomkies, Jr., September 3rd, 1881, $761.00. Filed and recorded Oct. 3rd, 1881. F. A. Leonard, dep. clerk & *ex off.* dep. recorder. Offered in evidence on behalf of def'ts and filed Feb'y 28th, 1891. J. B. Beattie, clerk.

EXHIBIT 15.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day, before me, W. G. Boney, dep. clerk and *ex officio* deputy recorder and notary public in and for the said parish, duly appointed, commissioned, and sworn, came and appeared L. L. Tomkies, Jr., a resident of De Soto parish, Louisiana, who declared that he does by these presents grant, bargain, sell, convey, and deliver, with full guarantee of title and with complete transfer and subrogation of all rights and actions of warranty
165 against all former proprietors of the property presently conveyed unto the New Orleans Pacific Railway Company, accepting this act of transfer, through R. H. Lindsay, agent, a resident of Caddo parish, Louisiana, the following-described property, to wit: All of block "G" of plat of Wylie's subdivision of lot fifteen (15), section twenty-five (25), township eighteen (18), range

fourteen (14) west, as per map of said plat, recorded in Book "X," 309, and also as per judgment of partition, Book "X," 331:

To have and to hold said described property unto said purchaser-, their heirs and assigns forever.

This sale is made for the consideration of the sum of seven hundred & sixty-one dollars cash, in hand paid, the receipt of which is hereby acknowledged.

The certificate of mortgages and tax receipt are hereby waived by the parties.

Done and passed at my office, in said parish of Caddo, in presence of Jno. Lake and Jas. M. Martin, competent witnesses, on this the 3rd day of October, A. D. eighteen hundred and eighty-one.

L. L. TOMKIES, JR.
N. O. P. R. R. CO.,
Per R. H. LINDSAY.

Attest: JOHN LAKE.
JAS. M. MARTIN.

166 W. G. BONEY,
Dep. Clk & ex Off. Dep'y Recorder & Notary Public.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original act of sale as the same now appears on file & of record in my office.

Given under my hand & seal of office this 23rd day of [SEAL.] July, A. D. 1887.

W. P. FORD,
Clerk 1st Jud. Dist. Court of La.

Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* L. L. Tomkies to N. O. P. R. R. Sale of land, etc. Filed and recorded Oct. 6th, 1881. F. A. Leonard, dep. clerk and *ex officio* recorder. Exhibit 15. Offered in evidence on behalf of defendants and filed Feb'y 28th, 1891. J. B. Beattie, clerk.

167 EXHIBIT 16.

STATE OF LOUISIANA, }
Parish of Caddo. }

Before me, W. G. Boney, deputy clerk and *ex officio* deputy recorder and notary public in and for said parish and State, duly qualified, personally appeared John Lake, sheriff and *ex officio* collector of State and parish taxes in and for said parish, acting herein in his said official capacity, who declared that he does by these presents sell, convey, and deliver unto F. A. Leonard, of said parish and State, the following described property, to wit:

One-third interest in and to lot No. fifteen (15) of section twenty-five (25), township eighteen (18), range fourteen (14), of the parish

of Caddo, Louisiana, and being same property assessed to succession of T. P. Hotchkiss upon the tableau of taxes in and for the parish of Caddo for the years 1877 & 1888.

This sale is made for and in consideration of the sum of forty-three $\frac{42}{100}$ dollars cash in hand paid, the receipt of which is hereby acknowledged, the sum being for taxes, $29.50; penalties, $8.42; advertising, $3.50; costs, $2.00; making said sum of forty-

168 three $\frac{42}{100}$ dollars. The said property was advertised in the Shreveport Times, a newspaper published in said parish of Caddo, from the eighteenth day of May, A. D. 1881, to the eighteenth day of June, A. D. 1881, making full clear thirty days from the date of first insertion to the day of sale, announcing said sale to take place at the front door of the court-house in which the civil district court of said parish is held within the legal hours for judicial sales, when, on said sale day between said legal hours of sale, the said Lake declared that he repaired to said court-house door and, after reading the advertisement announcing the amount of taxes, penalties, and costs due on said property by succession of T. P. Hotchkiss for the year 1877 & 1878, he proceeded to offer said before-described property for sale for said taxes, penalties, and costs, announcing said sale to be made, without appraisement, for cash, in legal-tender money of the United States, when, at said offering, the said Leonard having bid the said amount of forty-three $\frac{42}{100}$ dollars for said property he became the purchaser thereof for that price.

By virtue of the authority vested in him by the constitu-

169 tion and laws of the State of Louisiana and in the name of the State of Louisiana he, the said Lake, in his aforesaid official capacity, hereby sells said property to said Leonard for the above-stated sum.

Done and signed in presence of attesting witnesses on this the 6th day of October, 1881.

JOHN LAKE, *ex-Collector.*
F. A. LEONARD.

Attest: J. W. JONES.
J. B. SLATTERLY.

W. G. BONEY,
Dep. Clk & ex Officio Dep. Recorder & Notary Public.

SHREVEPORT, LA., *October 26th*, 1881.

We, the undersigned, heirs of T. P. Hotchkiss, deceased, do hereby ratify and approve above sale or tax title to F. A. Leonard, for a valuable consideration paid to us by him, and agree and bind ourselves not to disturb him in his title to or possession of the property described herein.

ELLA HOTCHKISS,
Per J. H. LEWIS, *Attorney-in-fact.*
JOHN & CARRIE HOTCHKISS,
Per J. H. LEWIS, *Tutor.*
ROBT G. HOTCHKISS.

Witness:
P. G. SCHILLING.

170 Know all men by these presents that I, Nannie H. Hotchkiss, one of the heirs of T. P. Hotchkiss, deceased, formerly of Caddo parish, Louisiana, do hereby ratify and approve a purchase made by F. A. Leonard at tax sale, in said Caddo parish, Louisiana, as per act of sale recorded in Book L of Conveyances of clerk's office of said parish, page 309, of the following property, belonging to said succession, to wit, one-third interest in and to lot No. fifteen (15) of section twenty-five (25), township eighteen (18), range fourteen (14), of said parish, and agree and bind myself and heirs not to disturb said Leonard, his heirs and assigns, in the peaceable possession of said property.

Signed, at Morgan, Kentucky, on this November 5th, 1881.

NANNIE H. HOTCHKISS.

STATE OF KENTUCKY, }
County of Pendleton. }

Before me, the undersigned authority, personally appeared Nannie H. Hotchkiss, whose name appears signed to foregoing instrument, who declared and acknowledged her signature to be genuine, and that she signed it for the purpose and objects therein stated.

171 Witness my hand and seal of office on this the 21st day of November, 1881.

W. C. HOLT,
Clerk of the County Court for Pendleton County, Kentucky.

STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original act of sale, & also of ratification by the heirs, as same appears on file & of record in my office.

Given under my hand and seal of office this 23rd day of July, A. D. 1887.

W. P. FORD,
Clerk 1st Jud. Dist. Court of La.

Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* State of La. to F. A. Leonard. Tax title and ratification. Filed & recorded January 12th, 1892. W. G. Bony, dep. cl'k & *ex off.* dep. recorder. Exhibit 16. Offered in evidence on behalf of def'ts and filed Feb'y 28th, 1891. J. B. Beattie, cl'k.

172 EXHIBIT 17.

STATE OF LOUISIANA, }
Parish of Caddo. }

Be it known that this day before me, Lewis E. Carter, a notary public in and for the said parish, duly appointed, commissioned, and sworn, came and appeared Frederick A. Leonard, of said parish and State, who declared that he does by these presents grant, bar-

gain, sell, convey, and deliver, with full guarantee of title and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property conveyed to the New Orleans Pacific Railway Company, herein represented by R. H. Lindsay, the following-described property, to wit:

Blocks of ground H, E, and D, as per map and subdivision of lot No. fifteen (15), of section twenty-five (25), township eighteen (18), range fourteen (14), of Caddo parish, La., recorded in Book of Conveyances "X," page 307, of clerk's office of Caddo parish, being same property acquired by succession of T. P. Hotchkiss in partition with L. L. Tomkies and W. D. Wylie, as recorded in said Book X, page 331. The said property was purchased by said Leonard
173 at sale for State and parish taxes made on the 18th June, 1881, for assessment of succession T. P. Hotchkiss for the years 1877 & 1878, the property therein being described as a one-third interest in and to lot No. fifteen (15), of section twenty-five (25), township eighteen (18), range fourteen (14), the said assessment having been made before the partition was effected:

To have and to hold said described property unto said purchaser, its heirs and assigns, forever.

This sale is made for the consideration of the sum of one thousand dollars cash in hand paid, the receipt of which is hereby acknowledged.

The certificate of mortgages and tax receipt are hereby waived by the parties.

Done and passed at my office in said parish of Caddo in presence of W. H. Wise and W. W. Madison, competent witnesses, on this the 12th day of January, A. D. eighteen hundred and eighty-two (1882).

F. A. LEONARD.
R. H. LINDSAY,
For N. O. P. R. R. Co.

Attest: W. H. WISE.
WM. W. MADISON.

LEWIS E. CARTER,
Notary Public.

174 STATE OF LOUISIANA, }
Parish of Caddo. }

I hereby certify that the above and foregoing is a true & correct copy of the original act of sale as the same now appears on file & of record in my office.

[SEAL.] Given under my hand & seal of office this 23rd day of July, 1887.

W. P. FORD,
Clerk 1st Jud. Dist. Court of La.

Endorsed: No. 99. United Sates circuit court, western district of La. R. N. Smith *et al. vs.* Jno. C. Brown, receiver, *et al.* F. A. Leonard to N. O. Pacific Railway Co. Sale of lots in Wylie sub.

Filed and recorded January 12th, 1882. W. G. Boney, dep'y notary public. Exhibit 17th. Offered in evidence on behalf of def'ts and filed February 28th, 1891. J. B. Beattie, clerk.

175 EXHIBIT 18.

STATE OF TEXAS, }
County of Dallas. }

Know all men by these presents that we, W. D. Wylie and Emma Wylie, wife of W. D. Wylie, of the county of Dallas, State of Texas, in consideration of the sum of eight hundred dollars paid by the Texas & Pacific Railway Company, a corporation duly incorporated under the general corporation laws of the State of Texas, represented by W. H. Abrams, land commissioner of said road, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey, unto the said Texas & Pacific Railway Co., of the county of ——, in the State of Texas, all that certain lot, tract, or parcel of land described as follows: The following lots or parcels of land lying and being situated in the parish of Caddo and State of Louisiana, and being more particularly described as follows, being lots (10) ten, (11) eleven, (12) twelve, (13) thirteen, and fourteen (14) of block "A" of Wylie's addition to the city of Shreveport, Louisiana, and subdivision of lot No. (15) fifteen, of section No. (25) twenty-five, township 18 N., of range 14, in said parish of Caddo and within the limits of the city of Shreveport, a plat of which subdivision is of record in Book X of Convey-
176 ances of Caddo Parish, State of Louisiana, these said lots being the same lots or parcels of land acquired by Mrs. Emma Wylie from her husband, W. D. Wylie, record of which deed from said W. D. Wylie to Mrs. Emma Wylie is of record in the office of the recorder of deeds and mortgages of said parish of Caddo.

The above and foregoing deed of conveyance is made in substitution of and in place of a certain deed of the above-described lots or property conveyed by the said Mrs. Emma Wylie and her said husband, joining in said deed, to the New Orleans Pacific Railway Company during the spring of 1881, which deed of conveyance has been lost or mislaid and does not appear of record in records of conveyance in said parish of Caddo, the said Tex- & Pacific Railway Company being the legal assigns and successors of the said New Orleans Pacific Railway Company, together with all and singular the rights, members, hereditaments, and appurtenances to the same belonging or in anywise incident or appurtaining:

To have and to hold all and singular the said premises unto the said Texas & Pacific Railway Company, their successors and
177 assigns forever, and we hereby bind ourselves, our heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said Texas & Pacific Railway Co., their successors and assigns, against every person

whomsoever lawfully claiming or to claim the same or any part thereof.

Witness our hands this 27th day of May, A. D. 1886.

W. D. WYLIE.
EMMA WYLIE.

THE STATE OF TEXAS, }
County of Dallas. }

Before me, Henry Ball, a notary public of the county of Dallas, in the State of Texas, on this day personally appeared W. D. Wylie and Emma Wylie, his wife, both known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purpose and consideration therein expressed; and the said Emma Wylie having been examined by me privily and apart from her said husband and having the said instrument fully explained to her, she, the said Emma Wylie, acknowledged the same to be her act and deed and that she had willingly signed the same for the purpose and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 27th day of May, A. D. 1886.

HENRY BALL,
Notary Public, Dallas Co., Texas.

178 CLERK'S OFFICE, CADDO PARISH, LA.

I hereby certify that the above and foregoing is a true and correct copy of the act of sale from Mrs. Emma Wylie & husband to the Texas & Pacific Railway Company as the same now appears on record in this office in Conveyance Book No. 3, page 586.

Given under my hand and official seal, at Shreveport, La., on this 27th day of July, A. D. 1887.

ALLEN V. WILSON,
[SEAL.] *D'y Clerk & ex Officio D'y Recorder.*

Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et al. vs.* Jno. C. Brown, receiver, *et al.* W. D. Wylie & wife to Texas & Pacific R'y Co. Sale of lots 10, 11, 12, 13, & 14, block "A," Wylie's sub. Filed & recorded July 3rd, 1886. W. G. Boney, d'y clerk & *ex officio* d'y recorder. Exhibit 18. Offered in evidence on behalf of defendants and filed February 28th, 1891. J. B. Beattie, clerk.

(Here follows diagram marked p. 179.)

180 Endorsed: United States circuit court, western district of La. No. 99. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* Exhibit 19. Map of Wylie's subdivision, in lot 15, sec. 25, T. 17, R. 14, Shreveport, La. Offered in evidence on behalf of defendants and filed Feb'y 28th, 1891. J. B. Beattie, cl'k.

181 *Extract of Minutes.*

MONDAY, *March 2nd*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JOHN C. BROWN, Receiver, *et al.* } No. 99.

This case came on again at this time to be heard; argument begun and case continued until tomorrow, Tuesday, March 3rd, 1891.

Extract of Minutes.

TUESDAY, *March 3rd*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JOHN C. BROWN, Receiver, *et al.* } No. 99.

Motion to tax costs filed.
This case came on again to be heard. After argument by counsel and charge of the court, the jury returned the following verdict:

Verdict.

"We, the jury, find for the plaintiffs in this suit for the whole of the land described in plaintiffs' petition and we find for the defendants on their call in warranty against the following warrantors: L. L. Tomkies for seven hundred and sixty-one dollars, Geo. M. Norman for one hundred and sixty-one dollars, F. A. Leonard for one thousand dollars."

182 Z. HOWELL, *Foreman.*

Entered and filed March 3rd, 1891.

J. B. BEATTIE.

The verdict was ordered to be filed, made of record, and the jury discharged from further consideration of the case.
Defendants' bills of exceptions signed and filed.

Bill of Exception No. 1.

U. S. Circuit Court, Western District of La., at Shreveport.

ROB'T N. SMITH *et al.*
vs.
JNO. C. BROWN & L. A. SHELDON, Receivers, *et al.* } No. 99.

Be it remembered that on the trial of this case on this 28th day of February, 1891, the defendant The Texas & Pacific Railway

Company, by counsel, offered as evidence to be read to the court and jury in support of this plea of *res adjudicata* and as material and competent evidence in support of said plea the petition of revival of the suit against the administrator of W. W. Smith, answer and amended answer, verdict of the jury, judgment of the district court, motion and order of appeal, and appeal bond, in a suit of The State of Louisiana *vs.* W. W. Smith, No. — on the docket of the
183 district court of Caddo parish, Louisiana, as shown by certified copies thereto annexed, and also certified copy of the minutes of the supreme court of Louisiana at its session at Natchitoches, La., in 1869, showing dismissal of the appeal taken from the judgment of the district court in said suit of The State of Louisiana *vs.* W. W. Smith, annexed also hereto.

To the introduction of said evidence counsel for the plaintiffs objected, and objections sustained, the evidence refused and rejected, and the jury instructed by the court to find for the plaintiffs on the said plea of *res adjudicata* for the following reasons, to wit:

All the evidence administered by either side on the plea of *res adjudicata* was contained in the record and evidence in the suit of State of La. *vs.* W. W. Smith and other record and written evidence offered by plaintiffs. The said evidence shows that after the death of W. W. Smith, pending that suit, the suit was revived as against the administrator of W. W. Smith, but it was not revived against the heirs of said Smith, who were then present or represented in the parish and State.

The said heirs were not affected by the said suit or the judgment therein.

It was agreed by counsel on either side that there was no dis-
184 pute or contradictory evidence administered on this plea of *res adjudicata*, and I directed the jury to find for the plaintiffs on the plea of *res adjudicata* in the undisputed evidence.

To which ruling and instructions to the jury defendants' counsel objected and tenders this bill of exceptions, which is allowed and ordered filed and made a part of this record.

March 3rd, 1891.

ALECK BOARMAN, *Judge*.

Endorsed: No. 99. United States circuit court, western district of La. Rob't N. Smith *et al. vs.* J. C. Brown & L. A. Sheldon, receivers, *et al.* Bill of exceptions No. 1. Filed March 3rd, 1891. J. B. Beattie, clerk.

Bill of Exception No. 2.

U. S. Circuit Court for Western Dist. of La., at Shreveport.

Rob't N. Smith *et als.* vs. Jno. C. Brown & L. A. Sheldon, Receivers, *et al.* } No. 99.

Be it remembered that on the 3rd day of March, 1891, after
185 the trial, argument of counsel, and the charge of the court, defendants' counsel asked the court to charge the jury as follows:

1st. Conceding that the United States did not own the land in controversy, the fact that the land department of the Government thought the title in the Government and the President of the United States issued a patent for the land in evidence, that this defect in the Government's title was not apparent, and is a strong circumstance, if not conclusive evidence, of the good faith of the purchaser, W. D. Wylie.

2nd. If the United States did not own the land conveyed by its patent to W. D. Wylie and which is the subject of controversy, the error on the part of vendor and vendee was an error of fact, which the law does not consider of such a nature as to prevent said Wylie and his vendees in possession from pleading prescription of ten years.

3rd. That the good faith of Wylie, as purchaser from the Government cannot be impugned, because by careful examination and inquiry he could have discovered the nullity of the Government's title. Good faith in the possession is always presumed.

4th. If the vender, Wylie, went into possession of the land
186 under a patent from the Government and had just ground to believe that his title was good, though in fact it was a nullity, the opinion is equal to title.

5th. The presumption is that buying from Wylie who was in possession as owner by virtue of a patent from the U. S. Government, perfect in form, Hotchkiss & Wylie were purchasers in good faith, and if they honestly believed Wylie to be the owner that is a sufficient foundation on which to rest the prescription of ten years. Whereupon the court erased the clause, "That is a sufficient foundation on which to" and inserted "that is if they believed Wylie had a title which would have made him the real owner of the — U. S. owned and could sell the land, then, so far as Hotchkiss & Tomkies, they could, if otherwise, in good faith and in possession of the land."

6th. "Whether the land in controversy belonged to this character of lands, donated by acts of Congress of 1849 & 1850 to the State of Louisiana, is a question of fact dependant upon evidence of this character of the land and does not prevent the plea of prescription, the plea of prescription, though it may be proven
187 to be of such character," which charge was refused and not given to the jury, except the 5th charge, which was given only in part and with amendments as set forth therein.

The reasons of the court for refusal of the charges asked and the erasure and amendments as above set forth are as follows:

I refused the first part of the 1st request, but said as to the latter part of the charge requested that the jury might consider the circumstance for what it was worth in testing Wylie's good faith.

I refused the 2nd charge because the land in question was shown by undisputed evidence to have been swamp and overflowed land in 1849 and included by law under the grant of 1849 by Congress to the State, and for that reason the land described in the Wylie's certificate from the land office and under which he sold to his vendors, Hotchkiss and Tomkies, and recited in his deed to them,

shows the land to be within the corporation limits of the city of Shreveport and was in said limits prior to the date of said certificate.

So far as good faith being, under the law, presumed in Wylie, I charged as requested, but added that the description of the land in the certificate showed the land to be in the city limits and
188 it charged herein with knowledge of said fact and with knowledge of the law which forbids the public lands of the U. S. lying within a city limits to be sold to any one under the homestead or other general land laws, and the presumption of good faith cannot avail herein. As to Wylie, I charged that his title was a nullity, and, under the undisputed facts in relation to the land lying within the city limits, and as to its character being that of swamp and overflowed land in 1849 and continuously afterwards, and under the law forbidding public lands to be sold when lying within a city's limits, and the law of Congress of 1849 donating such swamp and overflowed lands to the State, Wylie is charged with knowledge of such facts and law, and the certificate given to him cannot be taken as a basis for the beginning or recurring in his favor of the prescription of ten years.

I charged further in relation to testing the good faith of Wylie & vendors, Hotchkiss and Tomkies, that they should be charged with such knowledge as is shown to have been in the common knowledge of the men and community of Shreveport, their place of residence, as to the land being swamp and overflowed land in
189 1849 and continuously thereafter, unless the jury from other evidence in the case should believe otherwise as to such knowledge in them; that they should be charged with knowledge of the fact that the land was in the city limits by the description of the land in the certificate under which Wylie sold and which was recited in the act of sale to them, and they should be charged with knowledge of the act limiting the swamp and overflowed lands in 1849 to the State and of the law forbidding public lands of the U. S. lying within city limits to be sold to any one under the homestead or general land laws.

In relation to the matters requested in 5th request, I charged that the vendees of Wylie believed that Wylie had a title translative of property, such a title as would have made Wylie the real owner; if the U. S. owned the land, then the title of Wylie to Hotchkiss and Tomkies should, if they were otherwise in good faith and in such possession as the law requires of a possessor in good faith, be considered by the jury as a legal basis for the beginning and recurring of the prescription of ten years.

I did not give the sixth request as a charge, because I be-
190 lieve all of it that should be charged was included in what I said to the jury; to which ruling of the court and refusal to give said charges to the jury as asked counsel for the defendant excepts and tenders this bill and prays it may be filed and made a part of this record.

March 3rd, 1891.

ALECK BOARMAN, *Judge.*

Endorsed: No. 99. United States circuit court, western district of La. Robert N. Smith *et al. vs.* J. C. Brown & L. A. Sheldon, receivers, *et als.* Bill of exception No. 2. Filed March 3rd, 1891. J. B. Beattie, clerk.

Bill of Exception No. 3.

U. S. Circuit Court, 5th Circuit, Western District of Louisiana.

ROBERT N. SMITH *et als.*
vs.
JOHN C. BROWN & L. A. SHELDON, Receivers Texas & Pacific R'y Co. } No. 99.

191 Be it remembered that in this case, after trial and argument of counsel, the court charged the jury that the United States was forbidden to sell the land in controversy after the passage of the acts of Congress of 1849 & 1850 donating swamps and overflowed lands to the several States; that nothing further was required to be done, either by the United States Government or the State of Louisiana, to vest the title to the land in the State of Louisiana; to which counsel for defendant objects.

On this point I charged the jury that, under the act of 1849 & '50, the United States divested itself of all ownership of the swamp and overflowed lands in the State, and by that act inverted its title and ownership of such lands in the State of Louisiana; consequently the U. S. could not sell the lands to Wylie or to any one else.

To which ruling and charge of the court and refusal to give such charge to the jury as asked counsel for defendant excepts and tenders this his bill of exceptions; prays it may be filed and made part of the record.

M'ch 3rd, 1891.

ALECK BOARMAN, *Judge.*

192 Endorsed: No. 99. United States circuit court, western district of La. Rob't N. Smith *et al. vs.* John C. Brown, receiver, *et al.* Bill of exception No. 3. Filed March 3rd, 1891. J. B. Beattie, clerk.

Motion to Tax Costs.

R. N. SMITH *et al.*
vs.
JOHN C. BROWN, Receiver, *et al.* } No. 99.

Plaintiff moves that costs in this case be taxed, and asks that J. B. Beattie, clerk of this court, be directed to ascertain & report to this court the costs in said case.

A. H. LEONARD, *Att'y.*

Endorsed: No. 99. United States circuit court, western district of La. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* Motion to tax costs. Filed March 3rd, 1891. J. B. Beattie, cl'k.

193 *Extract of Minutes.*

MONDAY, *March* 16*th*, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.*
vs.
JOHN C. BROWN, Receiver, *et al.* } No. 99.

Judgment signed and filed. See decree.

Judgment.

U. S. Circuit Court, Western District of La.

R. N. SMITH *et al.*
vs.
BROWN, Receiver, *et al.* } No. 99.

In this case, by reason of the law and the evidence and the verdict of the jury being in favor of the plaintiffs, it is ordered, adjudged, and decreed that the plaintiffs, Robert N. Smith, Elizabeth A. Smith, wife of Marine Duval; Elizabeth W. Smith, and William L. Smith, have judgment against the defendant, The Texas & Pacific Railway Company, — the plea of *res adjudicata*, & it is further ordered and decreed that said plaintiffs have judgment against said defendant decreeing said plaintiffs to be the lawful owners of the tract of land described in their petition, viz., the subdivision of section twenty-five, township eighteen, range fourteen west, sit-
194 uated in the city of Shreveport, Louisiana, known as Cross Lake, on lot fifteen, in the U. S. surveys, and being tract now known as Wylie's subdivision of the city of Shreveport, as per plat filed in evidence; and it is further ordered that plaintiffs be put in possession of said land.

It is further ordered and decreed that the rights of the plaintiffs and their claims as to rents & revenues be reserved to them.

It is further ordered and decreed that the plaintiffs recover costs, to be taxed.

And, by reason of the law and the evidence and the verdict of the jury being in favor of the defendant, The Texas & Pacific Railway Company, in its call in warranty, it is ordered, adjudged, and decreed that said defendant do have and recover of L. L. Tomkies the sum of seven hundred and sixty-one dollars and of George M. Norman the sum of one hundred and sixty-one dollars and of F. A. Leonard the sum of one thousand dollars, with legal interest from this date until paid, and costs of suit.

Recorded and signed in open court this 16th day of March, A. D. 1891.

ALECK BOARMAN, *Judge.*

195 Endorsed: No. 99. United Sta.s circuit court, western district of La. R. N. Smith *et al. vs.* J. C. Brown, receiver, *et al.* Judgment. Filed March 16th, 1891. J. B. Beattie, clerk.

Extract of Minutes.

WEDNESDAY, *March* 18th, 1891.

Court met pursuant to adjournment.
Present: His Hon. Aleck Boarman, dist. judge, presiding.

R. N. SMITH *et al.* *vs.* JOHN C. BROWN, Receiver, *et al.* } No. 99.

Petition for writ of error to United States Supreme Court filed and order of appeal signed and allowed upon defendants giving bond in the sum of fifteen hundred dollars.

Petition for Writ of Error to Supreme Court.

U. S. Circuit Court, Western District of Louisiana.

ROB'T N. SMITH *et al.* *vs.* JNO. C. BROWN & L. A. SHELDON, Receivers, *et al.* } No. 99.

Petition for a writ of error to Supreme Court of U. S.

196 UNITED STATES OF AMERICA, *5 Circuit, Western Dist. of La.*

To the honorable justice of the Supreme Court of the United States:

And now comes the Texas & Pacific Railway Company and complains that in the records and proceedings and also in the verdict and rendition of judgment thereon in a suit between Robert N. Smith *et als. vs.* Jno. C. Brown and L. A. Sheldon, receivers, in which suit the Texas & Pacific Railway Company is the real defendant, tried in the circuit court of the United States for said western district of Louisiana, at the term of court thereof held on the 28th day of February, A. D. 1891, at Shreveport, and in which judgment was rendered against the said defendant railroad company on the 3rd day of March, A. D. 1891, a manifest error hath happened, to the great damage of the said defendant railroad company.

Wherefore they pray for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court as aforesaid allowed, and further pray for all orders and decrees necessary in the premises and general
197 and special relief.

WISE & HERNDON,
Att'ys for Texas & Pacific Ry Co.

Let writs issue as prayed for on defendant giving bond in the sum of fifteen hundred dollars according to law.

Done and signed in open court this M'c'h —th, 1891.

ALECK BOARMAN, *Judge.*

Endorsed: No. 99. United States circuit court, western district of La. Robert N. Smith *et al. vs.* Jno. C. Brown & L. A. Sheldon, receivers, *et al.* Petition for a writ of error to Supreme Court of U. S. Filed March 18th, 1891. J. B. Beattie, clerk.

198 *Bond for Writ of Error.*

Know all men by these presents that we, Jay Gould, as president of the Texas & Pacific Railway Company, as principal, and Wm. Winter, as surety, are held and firmly bound unto Robert N. Smith, Elizabeth A. Smith, Marine Duval, William L. Smith, Elizabeth W. Smith, and John S. Smith, their attorneys, executors, administrators, or assigns, in the full sum of fifteen hundred dollars, to be paid to the said Robert N. Smith, Elizabeth A. Smith, Marine Duvall, William L. Smith, Elizabeth W. Smith, and John S. Smith, their attorneys, executors, administrators, or assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of March, in the year of our Lord eighteen hundred and ninety-one.

Whereas lately, at a session of the circuit court of the United States, fifth judicial circuit, holding sessions in and for the western district of Louisiana, in a suit depending in said circuit court, wherein Robert N. Smith, Elizabeth A. Smith, Marine Duvall, William L. Smith, Elizabeth W. Smith, and John S. Smith are plaintiffs and The Texas & Pacific Railway Company is defendant,

199 being No. 99 on the docket of said circuit court, judgment was rendered against the said Texas & Pacific Railway Company, defendant, and the said Texas & Pacific Railway Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Robert N. Smith, Elizabeth A. Smith, Marine Duvall, W. L. Smith, Elizabeth W. Smith, and John S. Smith, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington on the —:

Now, the condition of the above obligation is such that if the said Texas & Pacific Railway Company shall prosecute its said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

JAY GOULD,
President of the Texas & Pacific Railroad Company,
By WISE & HERNDON, *Att'y.* [L. S.]
WM. WINTER.

Approved.
ALECK BOARMAN, *U. S. Judge.*

March 26th, 1891.

200 Personally appeared before me Wm. Winter, who, being duly sworn, deposes and says that he is surety on the foregoing bond; that he resides in the parish of Caddo, in the western district of Louisiana, and is worth the full sum of fifteen hundred dollars over and above all debts, liabilities, and exemptions.

WM. WINTER.

Sworn to and subscribed before me this the 26th day of March, A. D. 1891.

J. B. BEATTIE, *Clerk*.

Endorsed: No. 99. United States circuit court, western district of Louisiana. Robert N. Smith *et al. vs.* Jno. C. Smith & L. A. Sheldon, receivers Texas & Pacific R'y Co. Bond. Filed March 26th, 1891. J. B. Beattie, clerk.

201 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the western district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; William L. Smith, Elizabeth W. Smith, widow of the late James F. Smith, deceased, all residents and citizens of Shelby county, State of Kentucky, and John S. Smith, a resident and citizen of Denver, State of Colorado, plaintiffs, and The Texas & Pacific Railway Company (originally represented by John C. Brown and Lionel A. Sheldon, receivers), defendants, No. 99 on the docket of said circuit court, a manifest error hath happened, to the great damage of the said Texas & Pacific Railway Company, so originally represented by John C. Brown and Lionel A. Sheldon, receivers, defendants aforesaid, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 27th day of April, 1891, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 28th day of March, in the year of our Lord one thousand eight hundred and ninety-one.

Seal U. S. Circuit Court for the Western Dist. of La.

J. B. BEATTIE,
Clerk of the United States Circuit Court for the Western District of Louisiana.

Allowed M'ch 28, 1891.
ALECK BOARMAN, *Judge.*

[Endorsed:] United States circuit court, western district of Louisiana. No. 99. John C. Brown, receiver, *et al.*, plaintiffs in error, *versus* R. N. Smith *et al.*, defendants in error. Writ of error. (Represented.)

202 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Western District of Louisiana.

The President of the United States to Robert N. Smith, Elizabeth A. Smith, wife of Marine Duvall; William L. Smith, Elizabeth W. Smith, widow of the late James F. Smith, deceased, all residents and citizens of Shelby county, State of Kentucky, and John S. Smith, a resident and citizen of Denver, State of Colorado, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at the city of Washington, D. C., on or before April 27th, 1891, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and the western district of Louisiana, wherein The Texas & Pacific Railway Company, originally represented by John C. Brown and Lionel A. Sheldon, receivers, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said defendant (plaintiff in error), as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28th day of March, in the year of our Lord one thousand eight hundred and ninety-one.

ALECK BOARMAN, *Judge.*

203 [Endorsed:] United States circuit court, western district of Louisiana. No. 99. R. N. Smith *et al. vs.* John C. Brown, receiver, *et al.* Citation. Filed April 2nd, 1891. J. B. Beattie, clerk.

Marshal's Return.

On this the 2nd of April, in the year of our Lord one thousand eight hundred and ninety-one, personally appeared A. H. Bernstein, U. S. d'y marshal for the western dist. of La., before me, the sub-

scriber, J. B. Beattie, clerk U. S. c't court, 5th circuit, western dist. of La., and makes oath that he delivered a true copy of the within citation to D. T. Land, of the law firm of Land and Land, att'ys of record in the case of R. N. Smith *et als. versus* Jno. C. Brown, receiver, *et als.*, No. 99 on the docket of the U. S. c't court, west. dist. of La., by handing same to him in person, at his office, in the city of Shreveport, La., on the 2nd day of April, 1891, at 6 o'clock p. m.

A. H. BERNSTEIN,
U. S. D'y Marshal.

Sworn to and subscribed before me this the 2nd day of April, 1891.

[Seal U. S. Circuit Court for the Western Dist. of La.]

J. B. BEATTIE, *Clerk.*

204 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Western District of Louisiana.

CLERK'S OFFICE.

I, J. B. Beattie, clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, do hereby certify that the foregoing 208 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of R. N. Smith *et als. vs.* John C. Brown, receiver, *et al.*, No. 99 of the docket of the said court.

Seal U. S. Circuit Court for the Western Dist. of La.

Witness my hand and the seal of said court, at the city of Shreveport, La., this 3rd day of April, A. D. 1891.

J. B. BEATTIE, *Clerk.*

I, Aleck Boarman, United States judge for the western district of Louisiana, do certify that J. B. Beattie, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and western district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of Shreveport, La., in said district, this 3rd day of April, A. D. 1891.

ALECK BOARMAN, *Judge.*

Endorsed on cover: Case No. 14,586. W. Louisiana C. C. U. S. No. 133. The Texas & Pacific Railway Company, plaintiff in error, *vs.* Robert N. Smith, Elizabeth A. Smith, *et al.* Filed April 20, 1891.

Office Supreme Court, U. S.
FILED.
DEC 3 1894
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 133.

THE TEXAS AND PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

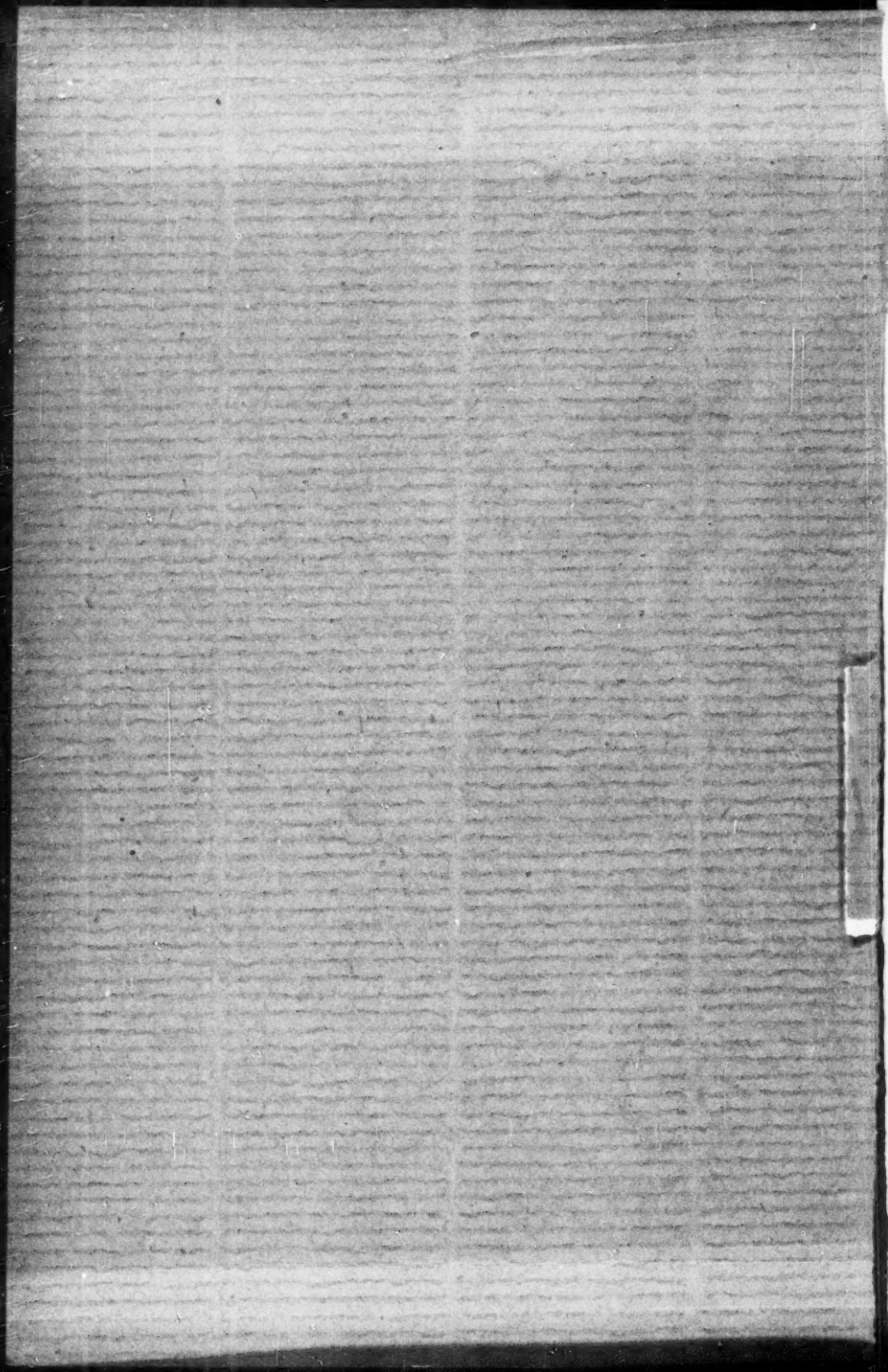
ROBERT N. SMITH ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

BRIEF FOR PLAINTIFF IN ERROR.

WM. WIRT HOWE,
JOHN F. DILLON,
WINSLOW S. PIERCE,
For Plaintiff in Error.

C. G. Burgoyne, Centre and Walker Streets, N. Y.



Supreme Court of the United States.

OCTOBER TERM, 1894. No. 133.

THE TEXAS AND PACIFIC RAILWAY COMPANY,
Plaintiff in Error,
vs.
ROBERT N. SMITH ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF LOUISIANA.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of Case.

This action was brought in the lower Court by Robert N. Smith and others, now defendants in error, as heirs of Wm. W. Smith, to be adjudged owners and to recover possession of a certain tract of land known as Cross Lake, situated in Section 25, T. 18, R. 14 west, in the parish of Caddo, Louisiana, containing 21 and $\frac{18}{100}$ acres, more or less.

The suit is what is called in Louisiana a petitory action; in which it is elementary that plaintiffs below must recover on the strength of their own title.

The claim of the plaintiffs below was, that W. W. Smith on the 14th of May, 1853, purchased from the

State of Louisiana the tract of land above mentioned at $1.25 per acre, and that it was swamp land which had passed to the State of Louisiana by the Acts of Congress on that subject ; that W. W. Smith was the legal owner of the land at the time of his death, and that the same passed to the plaintiffs below by inheritance and succession.

[The statement on page 1 of the transcript that Wm. W. Smith *died* on the 14th of May, 1853, is a clerical error. The word *died* should be *did*. W. W. Smith died between December 3d, 1857, and February 14th, 1859 (see Trans., p. 50)].

Plaintiffs below further averred (Trans., p. 2) that about the year 1881, the New Orleans Pacific Railway Company, a corporation of Louisiana, illegally and wrongfully took possession of said tract of land, sometimes called lot 15 in Section 25, T. 18, R. 14 W., situated within the limits of the City of Shreveport, and said possession continued until said company was consolidated with the Texas and Pacific Railroad Company in the year 18 , and said consolidated companies continued to unlawfully possess the said tract of land until the day of , 1885, when their possession was transferred to John Brown and Lionel A. Sheldon, Receivers appointed to take charge of all the property, &c., of said Texas and Pacific Railway Company, by decree of the Circuit Court rendered at New Orleans, Eastern District of Louisiana, in the case entitled Missouri Pacific Railroad Co. vs. Texas and Pacific Railway Co.

The suit proceeded at first against the Receivers of the property of the Texas and Pacific Railway Company, but in due time they went out of office and the property was restored to the possession of the Railway

Company, against whom a judgment was eventually rendered (Trans., pp. 2, 15 and 84).

The defendants below excepted to the alleged heirship of plaintiffs (Trans., p. 4). The exception being overruled, defendants filed an exception, and plea in the nature of *res judicata* (p. 5), on the following grounds:

"That in a suit entitled the State of Louisiana vs. W. W. Smith, No 5135 on the docket of the District Court of Caddo Parish, La., filed 1857, defendant then put at issue the validity and legality of his title to the land described in the plaintiff's petition herein under and by virtue of the certificate and patent described in said petition and, upon a final hearing, judgment was rendered in said suit decreeing said certificate and patent null and void, decreeing the cancellation of the same and ordering them to be delivered to the State of Louisiana, plaintiff therein; all of which will fully appear by reference to a certified copy, pleadings, evidence and judgment in said suit, hereto annexed and made part hereof.

"That the plaintiffs in this suit, claiming to be the heirs of said W. W. Smith, are bound by the judgment in said suit, which is as to them *res adjudicata*, and defendants, therefore, pray that this exception be maintained and plaintiff's suit dismissed."

(The record annexed to this exception is found as Exhibit 1, pp. 48 to 54 of the Transcript, and was offered on the hearing of the exception, and is noted at p. 17.)

This exception was what we call in Louisiana a peremptory one (C. P., 343 *et seq.*), and, whether called *res adjudicata* or not, its effect would be to dismiss the suit if it were maintained by the production of the record pleaded; for, if the the title of W. W. Smith was annulled, the plaintiff below could have no case.

The defendants below also filed an answer and call in warranty (Trans., pp. 6 and 7). The answer begins

with a general denial; and further avers that the sale and entry of said land, as set forth in the plaintiff's petition was *cancelled* by the Register of the State Land Office June 10th, 1853; that said cancellation was duly notified to said W. W. Smith, and that said sale, patent and entry were null and without authority of law on the following grounds:

"1. Because the law under which said entry was made had not been promulgated at the date of said entry.

"2. Because the land at the time of said entry had not been legally surveyed nor had any survey thereof been recognized by the State of Louisiana.

"3. Because the patent to the said land was issued by the Register in error of the fact that said entry had been canceled before the law authorizing the sale of shallow lakes had been promulgated."

The defendants further answered that said land had never been selected by the State of Louisiana as swamp and overflowed lands; that it was never reported to the Commissioner of the General Land Office and never approved as such by the Surveyor General or by the Secretary of the Interior or Land Commissioner:

That the land was never listed or returned by the Secretary of the Interior to the State of Louisiana as swamp and overflowed land, and that the State of Louisiana had never acquired and never claimed such lands as swamp and overflowed lands.

The defendants further averred in their answer that said land did not belong to that class of lands known or designated as swamp or overflowed lands, but to that other class of lands known as "Shallow Lakes," and therefore not embraced in the grant of swamp and overflowed lands from the United States Government under the Acts of Congress of 1849 and 1850.

The defendants further alleged in their answer that the Texas and Pacific Railway Company was the owner of the said land and in possession thereof, through its Receivers appointed by the United States Circuit Court for the Eastern District of Louisiana, by deed from the New Orleans Pacific Railway Company, or by act of consolidation as set forth in the plaintiffs' Petition, with full warranty of title and subrogation of all said vendors' rights of action and warranty against all former owners of said land.

The answer proceeds to aver :

" That said New Orleans Pacific Railway Company, by deeds translative of property, purchased said lands lands from Geo. M. Norman, L. S. Tompkies, Jr., I. J. McWilliams, T. H. Morris, John R. Jones, F. A. Leonard and James Williams and Wylie, all of which will be seen by reference to certified copies of deeds hereto annexed and made part hereof for greater certainty."

The answer further avers :

" And said-named persons acquired said property by " regular chain of title from W. D. Wylie, L. L. " Tompkies and T. B. Hotchkiss, who purchased from " W. D. Wylie, and said Wylie from the United States " Government under Act of Congress, approved May " 20th, 1862, and March 21, 1864, entitled 'An Act to " secure Homesteads to actual settlers on the public " domain,' as will be seen by certificate or Receiver's " receipt No. 683 of date February 24, 1872, and by " patent from the United States [No. 17,830] of date " [of December 1, 1874], which are hereto annexed " and made part hereof.

" Further, that Wylie went into possession of said " land as owner upon the issue of said receipt and " patent, and he and his vendees have continued in " possession thereof as owners ever since, and by reg- " ular chain of title by deeds translative of property to " the present owners and possessors as aforesaid."

They further averred that said property is worth the sum of ten thousand dollars.

Trans., pp. 6 and 7.

The answer concludes with a prayer that the plaintiff's demand be rejected, and for a judgment declaring the Texas and Pacific Railway Company to be the owner of the property; and the respondent calls in warranty the previous vendors (Trans., p. 7).

All the documents thus set up in and annexed to the answer form part thereof, and are found in the note of evidence, pages 17 to 79 of the Transcript.

In due time the defendant below, the Texas and Pacific Railway Company, filed the following exception and plea of prescription (Trans., p. 13):

"Now come defendants by counsel and aver that this Texas and Pacific Railway Company and its vendors have been in the quiet, peaceable, undisturbed and notorious possession as owners under authentic acts of sale translative of property and duly recorded of the property described in plaintiff's petition for a period exceeding *ten years*, and therefore plead the prescription of ten years to plaintiff's right of action."

The case finally came on for trial before a jury (p. 16), and the plaintiffs below offered certain evidence found at pages 16 *et seq.*, and the defendants offered certain testimony detailed at page 17 *et seq.*, and referred to in the bills of exceptions.

On March 3d, 1891, the jury found a verdict in favor of the plaintiffs below for the land, and for the defendant against the warrantors, as shown at page 79.

The defendant below reserved three bills of exceptions found at pages 79 to 83 inclusive, and judgment having been rendered in favor of plaintiffs below (p. 84), the case was brought up here by writ of error sued

out by the Texas and Pacific Railway Company, plaintiff in error in this Court.

Assignments and Specifications of Error.

I.

The Court erred in overruling the exception in the nature of *res judicata* found at pages 5 and 6 of the transcript, which should have been maintained.

II.

The Court erred in ruling out the record evidence offered in support of the exception in the nature of *res judicata*, found at pages 5 and 6 of the transcript, as shown by bill of exceptions No. 1, pages 79 and 80 of the transcript, which is hereby referred to and made a part of this assignment, and in stating that the heirs of Smith were present or represented in the Parish or State at the time the suit of the State of Louisiana against W. W. Smith was revived against the administration of his succession, and in directing the jury to find for the plaintiffs below on said exception, it appearing that counsel for the defendant below offered as evidence to be read to the Court and jury in support of this exception, and as material and competent evidence in support thereof, the petition [in, and] of revival of the suit against the administration of W. W. Smith, answer and amended answer, verdict of the jury, judgment of the District Court, motion and order of appeal and appeal bond in a suit of the State of Louisiana vs. W. W. Smith, No 5135 on the docket of the District Court of Caddo Parish, Louisiana, as shown by the certified copies thereto an-

nexed, and also certified copy of the minutes of the Supreme Court of Louisiana at its session, at Natchitoches Parish, La., in 1869, showing dismissal of the appeal taken from the judgment of the District Court in said suit of the State of Louisiana vs. W. W. Smith, annexed also hereto, said record evidence being set forth as Exhibit 1 of defendant's evidence in printed transcript, pages 48 to 54 inclusive. And it appearing that to the introduction of said evidence, counsel for the plaintiffs objected and objections sustained, the evidence refused and rejected, and the jury instructed by the Court to find for the plaintiff on the said plea, for the following reasons, as stated by the Court.

"All the evidence administered by either side on the plea of *res judicata* was contained in the record and evidence in the suit of State of Louisiana vs. W. W. Smith, and other record and written evidence offered by plaintiff. The said evidence shows that after the death of W. W. Smith, pending that suit, the suit was revived as against the administrator of said Smith, but it was not revived against the heirs of said Smith, who were then present or represented in the parish and State.

"The said heirs were not affected by the said suit or the judgment therein.

"It was agreed by counsel on either side that there was no dispute or contradictory evidence administered on this plea of *res judicata*, and I directed the jury to find for the plaintiffs on the plea of *res judicata* on the undisputed evidence.

"To which ruling and instructions to the jury defendant's counsel objected, and tenders this bill of exceptions, which is allowed and ordered filed and made a part of this record" (Trans., p. 80).

The full substance of the evidence so rejected, being certified copies of the pleadings and proceedings, judgment and record in the cause No. 5135, in the District Court, Parish of Caddo, State of Louisiana, entitled the State of Louisiana vs. Wm. W. Smith, wherein the

State of Louisiana sued to annul and cancel the certificate of entry from the State of Louisiana to the said Wm. W. Smith of the same land in controversy in the case at bar, the suit having been begun December 3d, 1857. The said Wm. W. Smith having died, John W. Smith, his administrator, was made party defendant, and appeared by his attorney February 14th, 1859 (Trans., p. 50), and filed his answer April 29th, 1859, and prayed for a jury November 28th, 1859, and the cause was tried and a verdict rendered in favor of the State and against the defendant November 12th, 1860, and judgment rendered and signed in favor of the plaintiff therein November 24th, 1860 (Trans., p. 53).

By which judgment the certificate of entry made by W. H. Crenshaw, Register, of the land in controversy in the case at bar May 14, 1853, and set forth in the transcript of this case at page 19, being the property known as Cross Lake, Section 25, Township 18, Range 14, quantity 21 $\frac{18}{100}$ acres, at $1.25 per acre, was annulled and avoided, and ordered to be delivered up (Trans., p. 51); and an appeal was taken by the defendant in said cause, John W. Smith, administrator of said Wm. W. Smith, to the Supreme Court of Louisiana, and proceedings had in said Supreme Court August 13th, 1866, by way of appearance and continuance, and further proceedings in said Court August 11, 1869, when the appeal was dismissed, and the judgment of the lower Court of November 24th, 1860, became final and executory; the record in said cause in the State Court, referred to as part of Bill of Exceptions No 1, and found in the transcript, pages 48 to 54, inclusive, being also referred to as part of this assignment.

III.

The Court below erred in not sustaining the plea of prescription of ten years, duly filed on behalf of defendant below, and found at page 13 of the transcript.

IV.

The Court below erred in refusing to charge the jury, as requested by counsel of defendant below, and as shown by Bill of Exceptions No. 2 (Trans. pp. 80 to 82), the request being as follows:

"Counsel asked the Court to charge the jury as follows: '1. Conceding that the United States did not own the land in controversy, the fact that the Land Department of the Government thought the title in the Government and the President of the United States issued a patent for the land in evidence [shows], that this defect in the Government's title was not apparent, and is a strong circumstance, if not conclusive evidence, of the good faith of the purchaser, W. D. Wylie.'"

The defendant below offered in evidence the receipts of the land office at Natchitoches, La., of October 19th, 1872, and February 24th, 1872, for payments made by W. D. Wylie for the land in dispute as stated in his deposition (p. 58), and the patent of the United States to said Wylie of December 1, 1874 (Trans., pp. 56 to 58).

The trial Judge of the Court below refused said charge with the following statement, as shown by the Bill of Exceptions No. 2 (p. 81):

"I refused the first part of the first request, but said as to the latter part of the charge requested that the jury might consider the circumstance *for what it was worth* in testing Wylie's good faith."

Which refusal to give said charge as requested and

the modification or statement of the Judge as above quoted are hereby assigned as error.

V.

The Court below erred in refusing to charge the jury as requested by counsel of defendant below and as shown by Bill of Exceptions No. 2 (Trans., pp. 80 to 82), the request being as follows:

"Counsel asked the Court to charge the jury as follows: (2d) "If the United States did not own the land conveyed by its patent to W. D. Wylie which is the subject of controversy, the error on the part of the vendor and vendee was an error of fact which the law does not consider of such a nature as to prevent said Wylie and his vendees in possession from pleading prescription of ten years."

The Court said in regard to said request and in refusing it:

"I refused the second charge because the land in question was shown by undisputed evidence to have been swamp and overflowed land in 1849 and included by law under the grant of 1849 by Congress to the State, and for that reason the land described in Wylie's certificate from the Land Office and under which he sold to his vendees Hotchkiss and Tompkies, and recited in his deed to them, shows the land to be within the corporation limits of the City of Shreveport, and was in said limits prior to the date of said certificate."

VI.

The Court below erred in refusing to charge the jury as requested by counsel of defendant below as shown by Bill of Exceptions No. 2, Trans., pp. 80 to 82, the request being as follows:

"Counsel for defendant asked the Court to charge the jury as follows: (3d) That the good faith of Wylie as purchaser from the Government cannot be impugned

because by careful examination and inquiry he could have discovered the nullity of the Government's title. Good faith in the possession is always presumed."

The Court saying in regard to said request and in refusing to give it as requested :

"So far as good faith being, under the law, presumed in Wylie, I charged as requested, but added that the description of the land in the certificate showed the land to be in the city limits, and it charged *him* with knowledge of said fact, and with knowledge of the law which forbids the public lands of the United States lying within a city's limits to be sold to any one under the homestead or other general land laws, and the presumtion of good faith cannot avail herein. As to Wylie I charged that his title was a nullity and under the undisputed facts in relation to the land lying within the city limits, and as to its character being that of swamp and overflowed land, in 1849, and continuously afterward, and under the law forbidding public lands to be sold when lying within a city's limits, and the law of Congress of 1849 donating such swamp and overflowed lands to the State, Wylie is charged with knowledge of such facts and law, and the certificate given to him cannot be taken as the basis for the beginning, or recurring, in his favor, of the prescription of ten years."

VII.

The Court below erred in refusing to charge the jury as requested by the counsel of the defendant below, as shown by bill of exceptions No. 2 (Trans., pp. 80 to 82), the request being as follows :

"Defendant's counsel asked the Court to charge the jury as follows :

"(4th) If the vendor Wylie went into possession of the land under a patent from the Government, and had just grounds to believe that his title was good, though in fact it was a nullity, the opinion is equal to title."

The Court saying in regard to said request, and in refusing to give it as requested :

"I charge further in relation to testing the good faith of Wylie and vendors Hotchkiss and Tompkies, that they should be charged with such knowledge as is shown to have been in the common knowledge of the men and community of Shreveport, their place of residence, as to the land being swamp and overflowed land in 1849, and continuously thereafter, unless the jury from other evidence in the case should believe otherwise as to such knowledge in them; that they should be charged with knowledge of the fact that the land was in the city limits by the description of the land in the certificate under which Wylie sold, and which was recited in the act of sale to them, and they should be charged with knowledge of the act limiting the swamp and overflowed lands in 1849 to the State, and of the law forbidding public lands of the United States lying within city limits to be sold to any one under the homestead or general land laws."

Which refusal to charge as requested, and modification, charge and remarks as quoted, are hereby assigned as error.

VIII.

The Court below erred in refusing to charge the jury as requested by the counsel of the defendant below as shown by bill of exceptions No. 2 (Trans., pp. 80 to 82), the request being as follows:

"Defendant's counsel asked the Court to charge the jury as follows:

(5th) "The presumption is, that buying from Wylie, who was in possession as owner by virtue of a patent from the United States Government, perfect in form, Hotchkiss and Wylie [*Tompkies*] were purchasers in good faith, and if they honestly believed Wylie to be the owner, that is a sufficient foundation on which to rest the prescription of ten years. Whereupon the Court erased the clause 'That is a sufficient foundation on which to' and inserted 'that is, if they believed Wylie had a title which would have made him the real owner of the [land, and if the] United States owned and could sell

the land, then so far as Hotchkiss and Tompkies, they could, if otherwise in good faith, and in possession of the land.'"

The Court saying in regard to said request and in refusing the same :

"In relation to the matters requested in the fifth request I charged that if the vendees of Wylie believed that Wylie had a title translative of property, such a title as would have made Wylie the real owner, if the United States owned the land, then the title of Wylie to Hotchkiss and Tompkies should, if they were otherwise in good faith, and in such possession as the law requires of a possessor in good faith, be considered by the jury as the legal basis for the beginning and recurring of the prescription of ten years."

Which refusal of said request and modification and statement made to the jury are assigned as error.

IX.

The Court erred in refusing the charge requested by counsel for defendant below, as is also show by Bill of Exceptions No. 2 (Trans., p. 80), as follows :

"Defendant's counsel asked the Court to charge the jury as follows :

(6th). "Whether the land in controversy belonged to this character of lands donated by acts of Congress of 1849 and 1850 to the State of Louisiana is a question of fact dependent upon evidence of this character of the land, and does not prevent the plea of prescription, though it may be proven to be of such character."

The Court saying in regard to said request and in refusing the same :

"I did not give the sixth request as a charge, because I believe all of it that should be charged was included in what I said to the jury" (Trans. p. 82).

Which refusal is assigned as error.

X.

The Court below erred, as appears by Bill of Exceptions No. 3 (Trans. p. 83), in charging the jury as follows:

"That the United States was forbidden to sell the land in controversy after the passage of the Acts of Congress of 1849 and 1850 donating swamp and overflowed lands to the several States; that nothing further was required to be done, either by the United States Government or the State of Louisiana to vest the title to the land in the State of Louisiana."

Concerning which charge the Court states in said bill of exceptions:

"I charged the jury that, under the Act of 1849 and 1850, the United States divested itself of all ownership of the swamp and overflowed lands in the State, and by that act inverted [invested] its title and ownership of such lands in the State of Louisiana; consequently, the United States could not sell the lands to Wylie or to any one else."

Which charge, as so given, is hereby assigned as error.

XI.

The Court erred in rendering judgment in favor of the plaintiffs below.

And, for these and other reasons apparent on the record, plaintiff in error prays for a reversal of the judgment herein.

ARGUMENT.

It may be useful to the Court to notice some dates as they appear in the record, and to distinguish the different persons who bear the not unusual name of Smith.

Wm. W. Smith undertook, on the 14th of May, 1853, to make an entry in the Land Office of the State of Louisiana of the land in controversy (Trans., pp. 1 and 19) together with other lands not in dispute. He never obtained any patent from the State of Louisana for the land in controversy here. On the 3d of December, 1857, the State of Louisiana brought its suit against Wm. W. Smith to annul and cancel the entry of the land here claimed, and the patent of other lands, upon the very cogent grounds that there was no law authorizing the entries, because the act which was supposed to authorize them had not then been promulgated, or become a law, and because the lands so attempted to be entered had not been legally surveyed, nor the surveys recognized by the State, even up to 1857, and upon the further grounds set forth in the Petition (Trans., pp. 48 to 50).

It would appear that soon after this Wm. W. Smith died and John W. Smith was appointed his administrator. It is manifest from the documents offered by the plaintiffs that Wm. W. Smith left no wife or children.

John W. Smith, administrator of the succession of Wm. W. Smith, was made defendant in the suit of the State February 14th, 1859, and made answer on the 29th of April, 1859, claiming the land in dispute for the estate he represented, by conveyance from the State of Louisi-

ana of all the right, title and interest of the State therein. The case, as noticed above, was then tried before a jury, a verdict rendered in favor of the State and the entry of the lands here in dispute annulled, avoided and ordered to be delivered up by judgment of November 24th, 1860.

And the case having been taken up to the Supreme Court of Louisiana by appeal the appeal was dismissed August 11th, 1869, and the judgment of November, 1860, left in full force and effect.

So that the case at bar was begun at Shreveport twenty-six years after this solemn judgment had been rendered and without any attempt to annul or question that judgment (Trans., pp. 52 to 54).

There is also a John K. Smith who figures in the Record (p. 19) who appears to have died in Kentucky some time prior to November 30th, 1858, and a Jas. F. Smith of Kentucky, who appears to have been living at that time (p. 21) and we understand that the plaintiffs, or some of them, claim to be the children of John K. Smith.

It appears by the documents offered by plaintiffs that John W. Smith, called administrator, was appointed curator of the succession of Wm. W. Smith October, 1858, (Trans., p. 30). This meant, of course, that the succession was vacant, all the heirs being absent from the State, as shown by the petition on page 30. As such he administered the succession, and was called administrator.

And here let it be noted that, although according to the documents offered by the plaintiffs below, extending from page 19 to page 35, it appears that one John Brown of Kentucky appeared in court at Shreveport

as guardian of the minor heirs of John K. Smith, and claimed that they were also among the heirs at law of Wm. W. Smith, and that a variety of proceedings were had, extending down to page 25 of the record, yet it does not appear that these persons of Kentucky, by themselves or through any representative, had accepted the succession of Wm. W. Smith, either with or without the benefit of inventory, at the time the judgment was rendered against John W. Smith, administrator, November 24th, 1860, as set forth at page 51 of the transcript. In other words, the succession of W. W. Smith was being administered by John W. Smith at the time of that judgment. The alleged heirs in Kentucky stood outside and made no attempt to accept the succession, to displace John W. Smith, or to administer themselves.

Again let it be noted that, while there appear references to the proposed taking of inventories in these documents offered by the plaintiffs below, extending from pages 17 to 48 of the record, it does not appear that the lands in dispute in this cause ever figured in any inventory, or that they were included in a partition suit which appears to have been carried on in the year 1868 (pp. 27 to 30) among the Smiths. So far as we can determine, it had never occurred to any of these people that they had any title to the lands in dispute in this cause until April, 1886, twenty-four years after the pretended title of W. W. Smith had been annulled.

It may be added that the "note of evidence" in the lower court, and the references thereto in the bills of exception, show all the evidence that was before the Court and jury, and we refer to the same under the

authority of *Badger vs. Randett*, 106 U. S., 255, 258. This note of evidence extends from page 16 to page 79 of the transcript.

I.

The First and Second Assignments of Error.

THE FIRST AND SECOND ASSIGNMENTS OF ERROR may be considered together. Under the practice of Louisiana, which is followed on the law side of the United States Circuit Court, the exception in the nature of *res judicata*, setting up the judgment of 1860 which annulled the title of W. W. Smith and left the plaintiffs below without any, is a peremptory one which is established by the production of the record pleaded. This record, which is made part of Bill of Exceptions No. 1, as we have seen, as well as of the exception itself, shows that the State of Louisiana commenced its suit in December, 1857, to annul the entry made by W. W. Smith of the land in controversy; that W. W. Smith died during the pendency of the suit, and that in 1859 the suit was continued against the administrator of his succession, who appeared and answered. Verdict and judgment were rendered in favor of the State, annulling the entry of the land in dispute, and leaving the succession of W. W. Smith without any pretense of title whatever.

The appeal from this judgment was dismissed seventeen years before the suit at bar was begun (p. 54).

It is hardly necessary to inform this Honorable Court that in Louisiana, where the civil law is the basis of

the jurisprudence with reference to rights of property, no such distinction is made between real and personal property as exists in the law of England. In Louisiana, as under the Roman law, land is put on the same footing and treated in the same way with movable property, so far as its nature admits. The curator of a vacant succession, or the administrator of the succession, administers both real and personal property, and sells the same under the direction of the Court.

It is true that the heirs of a deceased person may accept a succession unconditionally, and be put in possession by the Court, in which case no administration is necessary, for the heirs assume all the obligations of the deceased at the same time that they take all his property, and the creditors have thus the additional personal liability of the heirs, as well as the action of separation of patrimony, which need not here be discussed.

But if the heirs do not accept unconditionally there must be an administration, and if the heirs are minors they cannot accept unconditionally, for it would be absurd, illogical and dangerous for them to assume the obligations of a deceased person. Wherever there are minors, then, there must be an administration, and whatever be the name of that administrator, whether Curator or Administrator, he represents the succession both as to movables and immovables.

The case of *State vs. Lecky*, 14 La. An., 641, is directly in point in our favor as to these propositions. In that case the State sought to bring a suit against beneficiary heirs of Lecky for a defalcation, and the Court held that they were not proper parties, but that the proper party would be the administrator of Lecky.

The exception at the close of the opinion as to

natural tutors administering with the consent of creditors does not affect the philosophy of the decision, because a natural tutor of minor beneficiary heirs administering a succession as such under recognition of the Court, and with the consent of the creditors, is to all intents and purposes an administrator.

The case of *Pauline vs. Hubert*, 14 La. An., 161, is directly in point in our favor. The suit was brought against an administrator to enjoin the sale of a female child claimed by a succession as a slave, and to declare her free. Objection was made to the capacity of the administrator, but the Court said :

"We see no objection to the form of the action. *The heirs may not have accepted the succession*, and, as the administrator must represent the creditors, we see no objection to his standing in judgment for the protection of the rights of *all parties* in the effects entrusted to his administration. The article of the Code of Practice relative to testamentary executors (Art. 123) is not applicable. The powers of the testamentary executor at the time of the adoption of the Code of Practice were very different from those of the administrator."

And in *Woodward vs. Thomas*, 38 La. An., 238, the whole subject is reviewed and definitely settled in our favor, and it is there held that the administrator (as in the case at bar) is the proper party to sue *or be sued as to the effects or property of the succession.* We can add nothing to the persuasive logic of the Court in that case.

See, also, *Castagnie vs. Boulive*, 43, and at 946.

Further light may be thrown on this subject by reference to the practice on the foreclosure of mortgages

on real estate in Louisiana when the mortgage debtor has died.

While the estate is under administration it is elementary that the hypothecary action, as well as the executory process, may be brought against the administrator, and the seizure and sale thus made convey good title. In the case of the *Succession of Wilson* (12 An., 591), a mortgage creditor had brought legal proceedings on his mortgage against the administrator, under which the plantation and slaves of deceased were seized and sold, and the legality and effectiveness of the proceedings recognized.

Reference may also be made to the case of *Blanc vs. Dupre*, 36 Annual, 847.

It seems to us manifest that the suit of the State of Louisiana against W. W. Smith was revived against his administrator (Trans., p. 50); that the administator answered; that under our law he was the proper person to defend the suit; that no heir of W. W. Smith ever accepted the succession purely and simply in such a way as to be a proper party; that the verdict and judgment of November, 1860, annulled completely the title of W. W. Smith to the land in controversy, and the appeal from that judgment was dismissed. The Court had jurisdiction of the subject matter and the parties.

Wisdom vs. Buckner, 31 La. Anl., 52.

The remark made by the lower Judge in settling the "bill of exceptions (p. 80) that the suit of the State of Louisiana was not revived against the heirs of said Smith who were then present or represented in the Parish or State, and that said heirs were not affected

by said suit or judgment," is highly erroneous in purport and effect.

As we have seen in our statements of the facts, the evidence in the cause referred to by the Judge in the bill of exceptions and certified by the Clerk in the note of evidence, as thus referred to, shows that certain minor children of Jno. K. Smith, residing in Kentucky, represented by John Brown, also residing in Kentucky, as tutor, took some proceedings in the Parish of Caddo by which Brown was, probably, authorized to accept the succession of W. W. Smith for those minors with benefit of inventory. It could not be accepted for them or by them in any other way. Whether Brown, of Kentucky, so accepted or not is not clear, but it is legally certain that, if he did, such acceptance was only with benefit of inventory.

This would mean that they might be entitled to the residuum of the estate after the administrator had paid the debts and settled it, and a part of the settlement by such administrator would be the determination of this case of the State of Louisiana against W. W. Smith then pending.

As matter of fact and law, this was well known to all parties concerned. In 1858, when Jno. Brown qualified (Trans., p. 25), neither he nor his wards were residing in Louisiana; nor have they ever resided there.

In February, 1859, in the case of *State of Louisiana vs. Wm. W. Smith*, we find Jno. W. Smith recognized by the same Court as administrator, and filing his answer as such April 29th, 1859.

He was doing his legal duty in thus defending the succession against the attack of the State with respect to the land in controversy in the case at bar. It was found and decided, for the reasons stated in the Peti-

tion of the State, that W. W. Smith had no right to those lands, and his entry of them was annulled.

John Brown, tutor, of Kentucky, did not intervene in the cause, nor did the learned counsel for the State call him in, for the very good reason that it was neither necessary or proper to do so. The interest of the minors, if any they had, was, from the point of view of our law, only eventual and residuary.

Under the decisions we have cited above, if they had been brought into the cause, their being made parties would have been a vain ceremony, and wholly illegal (38 Annual, p. 243).

We think it plain, therefore, that the first and second assignments of error are amply sufficient to reverse the judgment. The Judge below erred in overruling the plea in the nature of *res judicata*, which was amply sustained by the record offered in its support referred to in the bill of exceptions, and printed at pages 48 to 54 of the transcript. The Judge below erred in excluding this record as testimony, and in directing the jury to find for the plaintiffs below on the plea.

His error may have arisen from the well-known fallacy described in the treatises on logic, where a word is used in some different meaning from that which is the subject of discussion.

It was such a fallacy which probably misled the lower Judge when he said that the *heirs* of W. W. Smith were present or represented in the parish at the time the suit of the State was being conducted against the administrator of W. W. Smith. He may have been thinking of persons who might *eventually become* heirs by accepting the succession.

As we have seen, even if those minors were present

and represented by John Brown, they were not unconditioual heirs; they could only have accepted with benefit of inventory; they could have nothing but an eventual interest, an incorporeal right to a possible surplus, after the settlement of the succession of W. W. Smith and the payment of its debts (38 An., 343).

It is hardly necessary to cite to this Court any authorities in support of the doctrine of *res judicata*. It was declared by Cicero to be one of the pillars of the State. The maxim *res judicata pro veritate accipitur* is found in the fiftieth book of the Pandects, D. 50, 17, 207, and the commentaries of the classical jurists, such as Papinian, Africanus, Ulpian and Julian, on this subject are ample and instructive (D. 44, 2, 3 *et seq.*).

The Supreme Court of Louisiana has always maintained the doctrine with firmness, as one founded on solid principles of public policy, and the Supreme Court of the United States has been equally emphatic.

Plicque vs. Perret, 19 La., 325.
Cromwell vs. County of Sac, 94 U. S., 351.

It seems legally impossible that our title to the land in controversy can now properly be disturbed in an action brought twenty-six years after the judgment rendered in the case of the State of Louisiana against W. W. Smith; a judgment which solemnly declared, after a public trial before a jury of the vicinage, that the entry made by Smith, and which is the only pretense of title on the part of the plaintiffs below in this cause, was illegal, and which directed that title to be annulled.

And if it be said that the plea here filed is not technically *res judicata*, for want of absolute identity of

parties on both sides of the case of *The State vs. Smith*, yet it is in the nature of such a plea, and it must dismiss the suit of plaintiffs below. It is elementary in Louisiana that the plaintiffs below can recover only on the strength of their own title. Our Code of Practice, Art. 44, declares:

> "The plaintiff in an action of revendication (such as this) must make out his title, otherwise the possessor, *whoever he be*, must be discharged from the demand."
>
> See *Castaguie vs. Poulicis*, 43 La. An., 943, 948.

There is no doubt about our possession, for it is alleged by the plaintiffs below. They must recover on the strength of their title and not on any alleged weakness in ours. It matters not, as to this point, to whom the land belongs—whether to us, or to the United States, or to the State—if it does not belong to the plaintiffs in the petitory suit. And it plainly does not belong to them. The entry under which they claim was annulled thirty-four years ago.

It may be observed, also, that the appeal taken by the administrator was devolutive only. The Judge fixed a bond for a devolutive appeal (p. 52), but none for a suspensive appeal, or *supersedeas*; and it is plain that there was no stay of proceedings (C. P., 577). The judgment of 1860 was at once effective.

The error of the lower Court in ruling out the record, and in directing the jury to find against us on the plea, is, we submit, manifest.

II.

The Third Assignment of Error.

It is submitted under the third assignment of error that the Court below erred in not sustaining the plea of prescription of ten years, duly filed in the cause, and found at page 13 of the transcript. Under the law of Louisiana, which is the law of the *situs* of the property, and therefore controls this case, a prescription of ten years should always be sustained where the defendant below, or his authors, have held for that time under a title translative of property, and in what the Code of Louisiana defines as good faith.

It is elementary that good faith is presumed. Our Code declares in Act 3481 (3448) that "good faith is *always* presumed in matters of prescription, and he who alleges bad faith in the possessor must prove it."

Our law requires that the person pleading this prescription should have what the law calls a just title, but this is explained as follows:

"Act 3484 (3450): By the term *just title*, in cases of prescription, we do not understand that which the possessor may have derived from the true owner, but a title which the possessor may have received from any person whom he honestly believed to be the real owner, provided the title were such as to transfer the ownership of the property."

In other words, where the possessor of real property in Louisiana has held the same in good faith under a title translative of property, for ten years and upwards, this good faith being presumed, the prescription of ten years will protect him. Now, in the case at bar, it appears beyond doubt by the recital of bill of exceptions No. 2, and the documents certified by the Clerk in his

note of evidence, and referred to in the bill of exceptions, and set forth in the transcript from page 55 to 78, inclusive, that W. D. Wylie, of Caddo Parish, entered the land in controversy under Acts of Congress of May 20th, 1862, and March 21st, 1864, and paid the fees February 24th, 1872, at the Receiver's office, Natchitoches, Louisiana, and made further payment October 19th, 1872, of the price (Trans., pp. 57, 58), and that on the 1st day of December, 1874, the United States of America conveyed the land in question to the said Wm. D. Wylie by the patent found at pages 56 and 57 of the transcript. The land was then conveyed through various deeds to the plaintiff in error, the Texas and Pacific Railway Company, as will appear by the documents set forth at pages 51 to 78, inclusive. There is no controversy about these facts.

We have, therefore, this state of things: An entry of these lands was made by W. W. Smith in 1853, but it is not alleged by plaintiffs below that it was ever *recorded* in the Parish of Caddo where the land is situated, and it appears, by the certificate of entry itself, that it was not so recorded. By the law of Louisiana, as it then stood and as it now stands, this entry, not having been recorded, could not be *notice* to third persons nor have any effect upon their rights.

Tulane vs. Levinson, 2 La. An., 787.

It was legally impossible, therefore, that this entry could apprise W. D. Wylie that W. W. Smith or any of his relatives made any claim to this land, and we do not imagine the defendants in error will differ from us on this point.

But, furthermore, this entry being illegal was annulled by a solemn judgment of the District Court for

the Parish of Caddo, in 1860, after a public jury trial, and the appeal from this judgment was dismissed in 1869. When, therefore, in 1872, W. D. Wylie was purchasing this land from the United States, and in 1874, when he received his patent, so far as he could be charged with notice of proceedings in the courts of that parish, he could not have suspected that W. W. Smith or his heirs could have any claim to this land.

Why should he not have been in good faith?

It is manifest, also, that the land officers of the United States believed that the land in controversy belonged to the United States, for otherwise they would not have received Wylie's money for it. It is plain that the Secretary of the Interior and the President of the United States believed this land to be the property of the United States, or they would not have executed a patent to Wylie for it under the seal of the United States.

Every presumption is in favor of the regularity and good faith of these officials of the Government of the United States. The land is then conveyed from one party to another, until finally the Texas and Pacific Railway Company acquired it. It seems to us that we have thus in the facts of the case all the elements of the prescription of ten years.

The plaintiffs below claimed under an erroneous entry annulled twenty-four years before the suit was brought, and defendant below, who is the plaintiff in error here, claims under a solemn patent of the United States, signed, sealed, delivered and recorded about twelve years before this suit was brought.

It seems hardly possible that the plaintiffs below can be allowed to recover on such state of facts.

The patent issued in 1874 to W. W. Wylie carried

the land to him in fee, and is the best title known to a Court of law.

Bagnell vs. Broderick, 13 Peters, 450.
Hooper vs. Scheimer, 23 How., 235, 249.

It is in the highest sense under our law a title translative of property and a just title. The whole case now before the Court goes on the theory that this land once belonged to the United States. That is conceded by everybody, and here is a solemn patent by which the United States conveys the land to our predecessors in title. The highest good faith attaches to such a state of things. The moment this patent was issued to Wylie the prescription began to run, and that term of prescription had been completed nearly two years before this suit was brought.

Bicknell vs. Comstock, 113 U. S., 149.

The lower Court fell into the error complained of by ignoring the well-settled jurisprudence of Louisiana on the subject of the prescription of ten years. That jurisprudence is plain. It does not require a perfect title to sustain such a prescription. Two things are required, namely:

(1) A just title; that is, one on its face translative of property, and not having, *on its face*, such defects as would put the vendee and his transferees on their guard. These defects must be on the face of the deed, and not *dehors* the instrument.

(2) Good faith; and that being always presumed, is especially and strongly presumed when there is the proper title, translative of property, and not having any manifest defect on its face.

Carrel vs. Cabaret, 7 Martin (O. S.), 406, 407.
Fort vs. Metayer, 10 Martin (O. S.), 2t, p. 440.

In *Eastman vs. Beiller*, 3 Robinson, 223, the Court said:

"A title defective in point of form cannot be a basis of prescription. By this the law means a title *on the face of which some defect appears*, and *not* one that may be proved defective by *circumstances* or evidence *dehors* the instrument."

And the Court there cites *Fricque vs. Hopkins*, 4th Martin (N. S.), at page 224, where it was said:

"The correct doctrine, we think, is this: That if the title under which the acquisition is made be *null* in itself, from defect of form, or *discloses facts* which show that the person from whom it is acquired had no title, it cannot form the basis of this prescription; *because*, the party acquiring must be presumed to know the law, and, consequently, wants the *animus domini* which is indispensable in cases of this kind. But where the title is free from these defects, and the property is not transferred by want of title in the party making the transfer, then it forms a good ground for the prescription; or, in other words, the inquiry is whether the error be one of fact or of law (Pothier, *Prescription*, No. 57)."

Speaking then of Boirin, one of the defendants, the Court proceeded:

"The sale to him is perfect in point of form, and discloses no fact which shows the title to be defective. It is not sufficient to deprive the possessor of the right of pleading prescription, *that he might by inquiry and careful examination discover that his vendor had no title.* If it were, then the law would have no effect which says the want of title in him who transfers shall not prevent the party to whom the transfer is made from pleading prescription."

In the case of *Hall vs. Mooring*, 27 Ann., 596, the petitory action concerned land also in Caddo Parish, and the prescription of ten years was pleaded and sustained. The plea was sought to be avoided by a

defect in the authority of an agent to sell to defendant; but the Court said that the defect, though it no doubt existed, was *dehors* the deeds. This decision is conclusive in our favor.

So also is *Pattison vs. Maloney*, 38 Anl., at page 888, where the subject is again reviewed.

And see *Giddens vs. Mobley*, 37 Anl., 417, and *Barror vs. Wilson*, 38 Anl., 209, as there cited; and *Dufour vs. Camfranc*, 11 Martin (O. S.), 714.

III.

The Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Assignments of Error.

The fourth, fifth, sixth, seventh, eighth and ninth assignments of error may be considered under one general head. We think they should all be maintained. They each depend on the legal principles cited in the foregoing argument.

The refusals of the lower Judge to charge the six points, as requested by defendant below, and the modifications which he insisted on making, are, as we have seen, set forth at pages 80, 81 and 82 of the transcript, and are detailed in the six assignments of error, from four to nine, inclusive, set forth above in this brief. There can be no dispute that the defendant below was claiming under the patent issued by the United States to W. D. Wylie in 1874, found at pages 56, 57, in the certified note of evidence, and referred to in the bill of exceptions. It will hardly be disputed that the six

requests found in the second bill of exceptions (Trans., p. 81) were pertinent to the issues made by the pleadings, upon the question of prescription; and it was of vital importance, in the interests of justice, that the jury should be fully instructed on these points, and should not be misled.

Taking up, then, the six requests embodied in the assignments of error we are now considering, we find: (1) The Court erred in not giving the first instruction requested, as detailed in the *fourth* assignment of error. The authorities cited above upon the general question of the prescription of ten years seem conclusive in our favor. Briefly stated, the first request, at page 81, simply asks the Court to tell the jury what is undoubtedly the law, and most important for their guidance, viz.: That, even if the United States did not have a good title to the lands in dispute in 1874, yet this defect, if it existed, was not apparent on the face of the patent, and the issue of the patent to Wylie was a strong circumstance in favor, if not conclusive evidence, of his good faith.

As we have already seen, the authorities are overwhelming that where the defendant who pleads the prescription of ten years, holds under a title that has no defects on its face, his good faith is not only presumed on general principles, but is very strongly supported by such a just title. In *Carrel vs. Cabaret*, 7 Martin, O. S., 406, 407, already cited above, the Court said:

"When the law says that a title defective in point of form shall not be the basis of prescription what does it mean? A title which, though apparently good, has some *latent* defect? *Certainly not.* A title which, though apparently clothed with all the formalities required by law, may be *proved defective* by some ex-

trinsic evidence? *No.* It means a title on the face of which the defect is stamped. And why? Because the holder of such a title cannot pretend that he possesses in good faith, for he is presumed to know the defect of form which his title shows, and cannot plead ignorance of the law."

In *Doune vs. Powers*, 3 Martin, N. S., at page 461, the Court, through Judge PORTER, in discussing the prescription we now urge, as contradistinguished from the prescription of 30 years which can prevail without any written title at all, said of the defendant :

* * * "As thirty years have not elapsed since he entered into possession, it is necessary for the validity of this pretension that he should have a just title and good faith. In support of the first, *which is necessarily the basis of the latter*, he presents a public act, which purports that the testamentary executor of the will under which the plaintiffs claim, and one Francesco de Rica, her attorney in fact, had sold to the defendant the premises now in dispute, as part of the succession of the ancestor of the defendant."

In other words, a title which has no defects on its face is a basis of good faith, and reinforces the doctrine that good faith is presumed in matters of prescription (see, again, 27 An., 597 and 38 An., 890).

Yet, the lower Judge, as shown at the foot of page 81, refused, as he says, the first part of the request, and, as to the latter part, said the jury might consider the circumstance "for what it was worth in testing Wylie's good faith." It is a little difficult for a lawyer to discover what this means precisely, but we submit that the most fair and rational interpretation is that the request was practically refused, and the jury then told, however, that they "might consider the circumstance for what it was worth in testing Wylie's good faith."

The "circumstance" was a solemn patent of the United States, as clear and dignified a title as ever has been produced in a court of justice—as just a title as ever was introduced in evidence. But the jury were told to consider it "for what it was worth," not for what the Supreme Court of Louisiana has said it was worth—not for what the Supreme Court of the United States has said it was worth—but what a common jury, necessarily ignorant of the law, might consider it to be worth. Such a disposition of a vital question of law in this cause must, it seems to us, require a new trial.

(2) The second request, at page 81 of the transcript, and as set forth in the *fifth* assignment of error, was refused *in toto*, and such refusal was reversible error. The request asked for a charge, which was plainly relevant and important in this controversy. The authorities all go to show that, even if the United States did not own the land conveyed by the patent of 1874, yet if the patent did not disclose this fact upon its face it would have been one of those errors of fact *dehors* the patent which would not prevent Wylie and his successors in title from pleading the prescription of ten years.

In *Fricque vs. Hopkins*, already cited, 4 Martin, N. S., 224, the doctrine is laid down as elementary, and as stated by Pothier, that where the deed under which defendant holds has some patent defect on its face, that constitutes an *error of law*, of which the defendant, the vendee in the deed, is necessarily notified, such an instrument cannot be the basis of the prescription of ten years; but where there are no defects

on the face of the deed itself, matters *dehors* the instrument, which may affect the title, are *errors of fact*, which cannot invalidate the plea of prescription.

Now, the contention of the plaintiffs below, that the United States did not own this land in 1872 or 1874, even if true, or that it was swamp and overflowed land, or that the General Assembly of Louisiana in 1871 undertook to extend the limits of the City of Shreveport in such a way as to embrace the land in question, even if these things were true, were *errors of fact dehors* the patent, and the second request to charge that doctrine should have been granted as the very foundation of the jury's deliberation upon this important question.

But it appears at foot of page 81 of the transcript, and by the *fifth* assignment of errors, that the Judge refused this request absolutely and in direct contradiction of the authorities above cited. We submit that the request should have been granted; that it was impossible for the jury to render a correct verdict without bearing this principle in mind, and that the reasons given by the lower Judge for refusing the request are infected with a profound fallacy. He is asked to charge that certain things if they existed, such as the character and situation of the land, being defects *dehors* the patent, would be errors of fact which would not vitiate the plea of prescription, and he refuses so to charge, because, as he says, these very things exist. In other words, the lower Judge says, substantially: "The land in dispute is, I think, of a certain character and situation; I am asked to charge the jury as to what is the legal effect of these facts, and I refuse the request because these facts exist."

We submit that this is reversible error.

(3) The *third* request, as shown at page 81 of the transcript and as set forth in the *sixth* assignment of errors, was disposed of by the lower Judge in such a way as to constitute error.

Counsel of defendant below (Bill of Exceptions No. 2, p. 81) asked the Court to charge the jury

"that the good faith of Wylie as purchaser from the Government cannot be impugned, because by careful examination and inquiry he could have discovered the nullity of the Government's title. Good faith in the possessor is always presumed."

This request is in the very language of our jurisprudence.

Fricque vs. Hopkins, 4 Martin, *N. S.*, 224.

The Judge says (p. 82) that he gave the charge as requested, but added that the description of the land in the certificate (meaning the certificates and Patent 17,830, set forth at pp. 56, 57 and 58 of the Transcript) showed the land to be in the city limits, and charged Wylie with knowledge of the fact, and of the law which forbids the sale of United States lands in city limits, &c., and the *presumption of good faith cannot avail herein.*" "As to Wylie," continues the Judge, "I charged that his title was a *nullity*," and he then proceeds to state that, on account of what he considers the character and situation of the land, the certificates and patent cannot be taken as a basis for the prescription of ten years.

Our argument thus far in this brief has been dim and feeble, if we have not already shown that this was grave error in the Court below. The character and situation of the land are *not* disclosed in the certificates and patents in any such sense as charged by the Court

below. Nor are these certificates and patent a "nullity" in the ambiguous and fallacious sense in which that term was employed by the Court. These matters are *dehors* the instruments. Nullities, in the terminology of our law, may be absolute or relative; that is, a deed may be absolutely void on its face or voidable. If these certificates and patents are void on their face, by an absolute nullity displayed on their face, the charge of the Judge may be right; but they are not. The character and situation of the land, if they are such as the Judge asserts, are something *dehors* the documents.

This is plain as to the question of swamp *vel non*. Is it not equally plain as to the situation with respect to the boundaries of the City of Shreveport? It is not pretended that the land in dispute has always been in the limits of Shreveport. The only claim of plaintiffs below in this regard is that the Louisiana Legislature passed, in 1871, the Act 98 of that year, which brought these lands within those limits. But this had to be established, if it be true, by evidence extrinsic to the patent. And, furthermore, the Act of 1871 itself said nothing about these lands, and the theory of the plaintiffs below would probably have to be supported by further extrinsic evidence that they really were in Shreveport. The situation as well as the character of the land was something outside of the patent.

Steel vs. Smelting Co., 106 U. S., 448.

If it be true that in 1872 and 1874 these lands were so situated that an error was made by the Interior Department in selling them to Wylie, this would be *a relative and extrinsic irregularity*, which would not in a court of law affect the patent as a basis for pre-

scription. The United States does not claim the land. The State of Louisiana does not claim it. The plaintiffs below claim it only under an entry judicially annulled in the year 1860.

(4) The Court below erred in refusing the *fourth* request in bill of exceptions No. 2, page 81 :

"That if Wylie went into possession of the land under a patent from the Government, and had just ground to believe that his title was good, though in fact it was a nullity, the opinion was equal to title."

We have assigned this error in the *seventh* specification.

The charge so requested should have been given. It was relevant, and it was correct in point of law, and it followed the language of the Supreme Court of Louisiana as used or quoted in *Hall vs. Mooring*, 27 Anl., 596, 598, and this was affirmed in *Pattison vs. Moloney*, 38 Anl., at p. 890. The statement of the Judge as to the character and situation of the land concerned something outside the patent, and was no answer to the request.

(5) The Court below erred in refusing the *fifth* request contained in Bill of Exceptions No. 2, page 81, and set forth in the *eighth* specification of error. In refusing it the Judge again refers to the character and situation of the land in dispute, matters extrinsic to the written title. Wylie, in 1872, conveyed to Hotchkiss and Tompkies two-thirds of the land in dispute (see Note of Evidence, Exhibit 5, p. 60 of Trans.).

There was nothing on the face of this deed to put the vendees on their guard as to the character or situation of the lands. Hotchkiss and Tompkies thus got a just title; that is, as the Supreme Court of Louisiana said in *Dufour vs. Camfranc*, 11 Martin (O. S.), at page 714, one

"of a nature to transfer the property; so that when it is not transferred it is *a defect of right in the person who makes it*, and not a defect in the title in consequence of which it is not transferred."

In other words, if there was a *defect of right* in the United States, or the President, in 1872 or 1874, to make the patent, or in Wylie to convey to his vendees, it was a defect which does not take away the right to plead the prescription of ten years; it is not a defect "in the title"—that is, on its face—but *dehors* the instrument.

It results that, as to two-thirds of the land in dispute, the prescription was also acquired under the deed from Wylie to Hotchkiss and Tompkies.

(6) The Court below erred in refusing to give the *sixth* request in charge to the jury, as set forth in Bill of Exceptions No. 2, page 81, and which refusal is set forth at page 82, and recited in the *ninth* specification of error.

The Judge declared he believed "that all of this request *that should be charged* was included in what he said to the jury" (p. 82). How much that was can hardly be determined. But we beg to submit that the request should have been granted as asked. Here was a serious contest between plaintiffs below, claiming under a State certificate of entry which had been an-

nulled by a judgment in 1860, and a defendant claiming under certificates and patents of the United States of 1872 and 1874. The facts are all set forth in the note of evidence, and referred to in the Bills of Exceptions. The Judge is asked to tell the jury, in view of the plea of prescription of ten years, that "whether the land in controversy belonged to this character of lands donated by acts of Congress of 1849 and 1850 to the State of Louisiana, *is a question of fact*, dependent upon evidence of this character of the land, and does not prevent the plea of prescription, though it (the land) may be proven to be of such character." This is the law and jurisprudence of Louisiana, and is most relevant to the issue. Yet the Judge refuses the request, because, as he states, "all of it that should be charged was included in what he said to the jury." It is not claimed by the Judge that all of it was given to the jury, but only such undefined amount as "*should* be charged." Yet all of it was good law, and relevant and needful, and all of it was not given. A part of it was withheld. And this was reversible error.

See *Thorwegan vs. King*, 111 U. S. at p. 554.

IV.

The tenth and eleventh assignments of error.

The *tenth* and *eleventh* assignments of error may now be taken up under this subdivision of the argument.

They refer to the error of the lower Court in giving the charge set forth in bill of exceptions No. 3, page 83, and detailed in the *tenth* assignment of errors, and in rendering a judgment for plaintiff.

As will be seen by the foregoing argument, the entire evidence in the case is set forth in the note of evidence, and is alluded to in the bills of exceptions. The Judge having overruled the plea in the nature of *res judicata*, and charged against us on the question of prescription, went one step further, as shown by bill of exceptions, No. 3, p. 83, and practically directed a verdict for plaintiffs below. If this was not technically done, an equivalent effect was produced. The Judge says :

"I charged the jury that under the Act of 1849 and '50, the United States divested itself of all ownership of the swamp and overflowed lands in the State, and by the act invested its title and ownership of such lands in the State of Louisiana ; *consequently the United States could not sell the lands to Wylie or to any one else.*"

It is plain that, when the plea of the thing adjudged in 1860 in *State vs. Smith*, was overruled, and the jury was charged directly against us on the question of prescription, the final charge, thus lastly quoted, was equivalent to a charge to the jury to bring in a verdict against us.

If our assignments of error, from one to nine inclusive, or any of them, are maintained, it would hardly be necessary to dwell on the tenth ; but, if none of them are held sufficient to justify reversal, we submit that the tenth should be maintained. The charge of the Judge lastly quoted above is incorrect as a matter of law, on the face of the two Acts of Congress to which he alludes. The Act of March 2d, 1849, 9 Stat., 352,

did not vest an absolute title to any specific tract of swamp and overflowed lands in the State of Louisiana, until, under Section 2, the Secretary of the Treasury who was then in charge had approved the selection by the State. The Act of September 28th, 1850, 9 Stat., 519, did not vest any absolute title to any specific tract of land in the State of Louisiana, until a patent of the United States had actually been issued to the State. The statement of the Judge, therefore, in his charge with reference to these Acts of 1849 and 1850, was erroneous and must have misled the jury.

In the case of *Martin vs. Marks*, 97 U. S., 345, 347, we understand the rule to be settled that the title of the State of Louisiana to "swamp and overflowed land unfit for cultivation" was not completed and made perfect, as to any specific tract of land, until after it had at least been surveyed and selected by the State, and approved by the Surveyor General, and the list returned to the General Land Office; and that, under the Act of 1850, the title of the State would not be completed and made perfect until a patent was issued by the United States to the State, and that neither of these Statutes had the legal effect attributed to them by the lower Judge in this case.

But if the Judge meant to say that he was satisfied that, after the Acts of 1849 and 1850 had been passed, the State of Louisiana had taken such steps under those acts, as were required by their terms, to vest in the State of Louisiana the title and ownership of the land in dispute, and that therefore the United States could not in 1872 or 1874 sell this tract of land to Wylie, even if we can attribute such a meaning to his words, the charge would be erroneous, misleading and injurious to the rights of the defendant below.

As already noted above, in *Badger against Raulett*, 107 U. S., 255, 258, in a case at law going up from the United States Circuit Court in Louisiana, the "note of evidence" was considered by this Court in connection with the bills of exception. Following this, and looking at the evidence and bills of exception in connection with the pleadings, we find no support for the charge of the Judge, even from this point of view. So far as this tract of land in dispute was concerned, it was never approved or patented to the State of Louisiana, and the answer so declares (p. 6); and, even if the State may have had a general right to such approval and patent, it does not appear that she ever exercised this right as to this specific tract. On the contrary, the State in her own Petition in the case against W. W. Smith (p. 46) declares that these prerequisites to the complete and perfect title to the land here in dispute had not been taken up to December, 1857, and the entry by Smith, under which alone the plaintiffs below claim, was annulled (pp. 48, 51). Nor is there any evidence that such prerequisites have ever been complied with in such a way as to vest in the State of Louisiana the complete and perfect title alluded to in the case of Martin against Marks above cited.

It would seem that the Judge, therefore, erred even from this point of view, in telling the jury that the United States had no right to sell this land to Wylie. He thus laid down a very dangerous doctrine which might imperil the title of any plantation in Louisiana, which had been patented by the United States since 1850, and which should have in it some land which some one might claim to be "swamp or over-flowed land made thereby unfit for cultivation."

And this charge was erroneous, because there was no evidence to support it. It is a plain error for the Judge to charge a jury concerning a matter as to which there is no evidence, for such a charge could only confuse the minds of the jurors at a time when it is of extreme importance that their minds should be kept as clear as may be reasonably possible. Such was the rule laid down in *U. S. vs. Breitling*, 20 Howard, 252, 255.

V.

We ask that the judgment of the Circuit Court be reversed, with costs.

Wm. Wirt Howe,
John F. Dillon,
Winslow S. Pierce,
Of Counsel.

Office Supreme Court, U. S.
FILED.
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SUPREME COURT OF THE UNITED STATES.

October Term, 1894.

No. 133.

THE TEXAS AND PACIFIC RAILWAY COMPANY

versus

ROBERT N. SMITH ET ALS.

SUPPLEMENTAL BRIEF FOR RAILWAY COMPANY.

W. W. HOWE,
JOHN F. DILLON,
W. S. PIERCE,
For Plaintiff in Error.

THOMASON, PRINT. 33 NATCHEZ ST., N. O.

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SUPPLEMENTAL BRIEF FOR RAILWAY COMPANY.

I.

The counsel of plaintiffs below, defendants in error, make a point as to bills of exception which it seems to us is not sound, and cite the decision in Phelps vs. Mayer, 15 Howard, 160. In the last named case, this Court did not establish a barren technicality, but stated as follows (p. 161):

"The verdict was rendered on the 13th of December, and the *next day* the plaintiff came in Court and filed his exception. There is nothing in the certificate from which it can be inferred that this exception was *reserved* pending the trial and before the jury retired."

The status in the instant case is quite different. The hearing and trial went on from the 28th February to 3d of March. See p. 79. The first bill was reserved February 28th, p. 79. The argument was concluded, the jury charged, and the other exceptions reserved March 3d. The bills of exception were signed and filed the same day in open Court, as appears by the minute entries, p. 79, as well as by their recitals and dates. There is everything "from which it can be inferred" that the exceptions were duly reserved. The judgment was not entered until March 16th. It seems to us that the rule which applies to the case at bar was laid down for this Court through Mr. Justice Field in French vs. Edwards, 13 Wallace, 506, 516, where it was said of a bill of exceptions:

"It shows that the exceptions were taken at the trial, and that is sufficient. It is dated during the term and was in fact filed before the judgment on the verdict was entered."

And see Hunnecutt vs. Peyton, 102 U. S. 333, 353, 354, and cases there cited; where the rule is laid down that exceptions should be reserved or noted "before verdict," but may be settled afterwards.

See also Railway Co. vs. Heck, 102 U. S. 129, and Belk vs. Meagher, 140 U. S. at p. 289. As stated in the latter decision, the question is: was the point "brought to the attention of the court below, and de-

cided by it." It seems plain that the points we here discuss were duly brought to the attention of the court below, and decided by it.

And see rule laid down by this Court through Mr. Justice Gray in Bank vs Eldred, 143 U. S. at p. 298. ×

II.

The plaintiffs below, who are defendants in error here, point out the fact, as shown at page 31 of the Record, that John W. Smith was discharged as administrator in 1867; and they seek in this way to avoid the effect of the judgment of the Supreme Court of Louisiana, dismissing the appeal in the case of the State of Louisiana against W. W. Smith, as shown at page 54. We submit that there is no force in this point. The matter is a matter of record. We have shown in our original brief, that John W. Smith, as administrator, was properly made a party in the suit of the State of Louisiana, to cancel the entry made by W. W. Smith. John W. Smith, administrator, took a devolutive appeal, and as appears at page 54, this appeal was dismissed.

There is a very high presumption in favor of the proper discharge of duty by counsel, and by the Court, and we know of no justification for any collateral attack upon such action, or for any theory that it is null and void. It will not be pretended that the Supreme Court of Louisiana, as well as the lower court,

× Ward v Cochran
150 U.S. 597

had no jurisdiction of the cause, and both tribunals are presumed to have done their duty.

The counsel of W. W. Smith, and of his administrator, are presumed to have done their duty, and the attempt of the defendants in error here to ignore adjudications of the District Court of the Parish of Caddo, or of the Supreme Court of Louisiana, seem to us unsupported by any rule of law with which we are acquainted.

We understand it to be the duty of the Courts, which will be cheerfully performed, to set their faces against all collateral assaults on judicial proceedings.

Let us suppose, by way of illustration, that in this Honorable Court a writ of error had been dismissed twenty-five years ago. Would this Court recognize the right of a State tribunal to say that the Supreme Court of the United States had no right to dismiss such a writ of error and to say this in simply a collateral case? We think this question answers itself in the negative.

III.

Some question is made by the defendants in error with respect to the testimony in this case. They intimate that the record contains only a portion of the evidence. The certificate of the clerk, on page 89, declares that the transcript of record contains a full, true, complete and perfect transcript of the record and

proceedings had, together with *all the evidence* adduced on the trial of the cause. The note of evidence thus certified to be all the evidence adduced, extends from pages 16 to 78, inclusive. We submit that the bills of exception sufficiently refer to all this evidence, whether documentary or otherwise, and to the *pleadings*, to enable the Court to pass upon the questions involved.

We respectfully submit that great injustice has been done to plaintiff in error. The plaintiffs below had utterly no right to the land. Under such circumstances the Appellate Court will grant all possible relief.

IV.

The cases of *Wright vs. Roseberry*, 121 U. S. 488, and *San Francisco Savings Co. against Irvin*, 28 Fed. Rep. 708, are not against the views which we have urged in this case. We understand the principle to be, as stated in our original brief, that the title to any *particular tract* of land, under the swamp land grants, could only attach to such particular tract when it was officially identified by some method prescribed by law. Thus, in *Wright vs. Roseberry*, it was said by the Court, through Mr. Justice Field, at page 500: "When identified the title would become perfect, as of the date of the act." At page 501 of the same decision a quotation is made from the letter of Mr. Stuart, then Secretary of the Interior, to the following effect:

"When selections are made and approved, or the patent issued, the title therefor becomes perfect, and has relation back to the date of the grant."

In the case at bar, it is not pretended that the tract in dispute was ever selected by the State of Louisiana or approved to it, or identified in any way. So far as W. W. Smith was concerned, the action of the State was adverse to every claim of the defendants in error.

Respectfully submitted,

W. W. HOWE,
JOHN F. DILLON,
W. S. PIERCE,
For Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES.

No. 133. October Term, 1894.

THE TEXAS AND PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

versus

ROBERT N. SMITH, ELIZABETH A. SMITH ET AL.

Error to Circuit Court of the United States for the Western District of Louisiana.

BRIEF AND ARGUMENT OF COUNSEL FOR R. N. SMITH ET AL.

A. H. LEONARD,
LAND & LAND,
Counsel for Defendants in Error.

SUPREME COURT OF THE UNITED STATES.

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The attention of the Court is directed to the fact that the record is encumbered with a *portion* of the evidence adduced on trial and with a mass of papers and documents not connected with or referred to in any bill of exception, and not in any manner related to any matter at issue in this Court.

This involves much unneccessary labor in examining the record and leads to confusion.

As this cause is pending on writ of error, questions of law only can be reviewed, and no evidence can be considered, except such as is presented by or connected with a bill of exception.

STATEMENT OF CASE.

This is an action to recover possession of a certain tract of land lying within *the corporate limits* of the City of Shreveport, Louisiana, known as Cross Lake, situated in Section 25, township 18, range 11, sometimes called lot 15 of said section, containing 21 18-100 acres.

The plaintiffs, in Court below, heirs of W. W. Smith, deceased, allege that said tract is swamp and overflowed land, granted to the State of Louisiana by act of Congress of March 2nd, 1849, "to aid this State in draining the swamp land therein," and by Act of Congress of September 28th, 1850, "to enable the State of Arkansas and other States to reclaim the swamp lands whithin their limits, (9 Stat. 519) and by the State sold as swamp and overflowed land to W. W. Smith on May 14th. 1853." That all sales of land in Louisiana claimed as swamp and overflowed land, whether made by the United States or by the State, and whether the land was of that character or not, were confirmed

by Act of Congress of March 2nd, 1855, "for the relief of purchasers and locators of swamp and overflowed lands."

That W. W. Smith acquired an indefeasible title to said land from the State by purchase, and from the United States by said confirmatory act.

That they are owners of said tract of land which is in the possession of John C. Brown and L. A. Sheldon, Receivers of the Texas & Pacific Railway Company, who refuse to deliver same. That it lies within the corporate limits of the City of Shreveport and is worth one thousand dollars.

The prayer is for judgment for recovery of said tract of land with rents and revenues.

The defendants, in Court below, appeared first with an exception denying heirship of plaintiff—which was tried and overruled.

The plea of *res judicata* was next interposed and overruled.

This plea avers that the certificate and patent issued to W. W. Smith for the land in controversy were declared null and void by a judgment rendered in the suit of the State of Louisana vs. W. W. Smith, and that the plaintiffs, as heirs of W. W. Smith, are barred by that judgment.

The Receivers then answered, denied generally the allegations of the petition, alleged that the sale

or entry of land, as set forth in said petition, was cancelled, and that the sale, entry and patent to W. W. Smith are null. 1st. Because the law under which said entry was made had not been promulgated at the date of the entry.

2nd. Because said land had not, at the time of said entry, been legally surveyed, nor had any survey thereof been recognized by the State of Louisiana.

3rd. Because the patent to said land was issued by the Register in error of fact that the entry had been cancelled before the law authorizing the sale of shallow lakes had been promulgated. Further answering, they say said land was never selected by the State of Louisiana as swamp and overflowed lands, has never been reported to the General Land Office or approved as such, or listed, or returned by the Secretary of the Interior to the State as swamp and overflowed lands. That the State never acquired or claimed said land as such, that said land does not and never did belong to that class of lands, and is not embraced in the swamp land grants.

Further answering, said Receivers say: The Texas & Pacific Railway Company is owner of said land, having acquired from the New Orleans Pacific Railway Company, who acquired from certain persons, who acquired from W. D. Wylie.

T. P. Hotchkiss and L. L. Tomkies, who acquired from W. D. Wylie, who purchased from the United States, under Act of Congress, approved May 20, 1862, "to secure homesteads to actual settlers on the public domain," as shown by Receivers' certificate and patent, and that the land is worth $10,000.

They pray for judgment rejecting plaintiffs'. demands; that the New Orleans Pacific Railway and its assigns be called in warranty, and in event of recovery by plaintiffs for judgment over against said warrantors.

George M. Norman, warrantor, answered, adopting the answer of the Receivers.

The other warrantors have made no appearance. The Receivers next interposed the plea of prescription of ten years in bar.

On January 3rd, 1891, the Receivers having been discharged, the Texas and Pacific Railway Company appeared in its own right, adopted all the pleadings presented by the Receivers and asked to be substituted as defendants, which was allowed.

On these issues, a jury trial was had, a verdict found for plaintiff in lower Court, and a judgment rendered, decreeing them to be the owners of the land in controversy.

MERITS.

There being no error patent upon the Record, the judgment of the Court *a qua* is open to revision only so far as errors of Judge *a quo* on questions of law are presented by bills of exception. Three bills are on the Record, but none of them is a bill such as can be considered in this Court.

They do not appear to have been tendered in open court, nor does it appear that exceptions were taken while the jury was at the bar, or that they were taken in open Court.

In order to make a bill of exceptions valid, it must appear by the transcript, not only that the ruling of the trial judge was made on trial, but also that the party excepting to such ruling excepted while the jury was at the bar. The bill of exceptions must be taken in open court and must appear by the certificate of the Judge who authenticates it, to have been so taken. Phelps vs. Mayer, 15 Howard 160.

There being no valid bill of exceptions, there is nothing before this Court and the judgment rendered in Court *a qua* should be affirmed.

But even if the bills of exception in the record were such as could be properly considered, they show no error on part of Judge *a quo*.

The defendants in lower court virtually aban-

doned their answer, and relied on their special pleas of *res judicata* and prescription.

It is true that an exception was taken to a portion of the charge of the trial Judge on the merits, but it is difficult to believe that any argument will be seriously presented in support of the exception.

That charge is as follows: Bill of Exception No. 3, Record p. 83.—"Under the Acts of Congress of 1849 "and 1850, usually called the Swamp Land Grant "Acts, the United States divested itself of all "ownership of the swamp and overflowed lands in "the State of Louisiana, and by those acts invested "the title and ownership of such lands in the State, "consequently the United States could not sell the "lands to Wylie or to any one."

The uncontradicted evidence adduced in Court *a qua* proved that the land in controversy was swamp and overflowed land, within the meaning of the Acts of Congress. The verdict of the jury is conclusive as to that fact.

The swamp land grants were present grants by which the title to all lands of the character mentioned in them passed immediately to the State. This is settled by repeated decisions of this Court. See Wright vs. Roseberry, 121 U. S. 488; San Francisco Savings Company vs. Irwin, 28 F. R. 708. Such being the fact, and such being the law,

it is clear that after the date of the swamp land grants the United States were divested of ownership of the land in controversy, and consequently could not sell it or dispose of it in any manner to any one.

RES JUDICATA.

Bill of Exceptions No. 1, Record p. 79, is to the ruling of Judge *a quo*, rejecting certain evidence offered in support of the plea of *res judicata*, viz: The pleadings, judgment, motion, order and bond for appeal in suit State of Louisiana vs. W. W. Smith, No.—— on docket, District Court, Caddo Parish, Louisiana, and the minutes of the Supreme Court of Louisiana, showing the dismissal of the appeal taken from said judgment. This evidence was excluded for the following reasons, stated by Judge *a quo:* "All the evidence offered by either "side on the plea of *res judicata* was contained in "the record and evidence in the suit of the State of "Louisiana vs. W. W. Smith, and other written "and record evidence offered by plaintiff, and shows "that after the death of W. W. Smith, pending that "suit, said suit was revived against the administra-"tors of W. W. Smith, but it was not revived "against the heirs of W. W. Smith, who were then

" present or represented in the Parish and State.
" Therefore, said heirs were not affected by the suit
" or the judgment therein. It was agreed by coun-
" sel on either side that there was no dispute or
" contradictory evidence on the plea of *res judicata*."

The Judge *a quo* directed the jury to find for the plaintiffs in court below on the undisputed evidence.

It is settled that it is the right and duty of Federal Courts to direct juries to find a particular verdict when the facts are undisputed.

The ruling rejecting the evidence offered was correct. That evidence was clearly inadmissable as against the plaintiffs below.

There is not, and never has been any judgment rendered in the case of the State vs. W. W. Smith, which could support the plea of *res judicata* to estop any one.

The pretended judgment in that case isan *absolute nullity* because it was rendered when there was no party defendant.

W. W. Smith died while said suit was pending in the District Court. Until the suit was revived properly, nothing could be done in it. It is what is styled in the jurisprudence of Louisiana a real action, that is, an action relating to claims made on immovable property. La. Code of Practice, Art. 4-41.

In order to revive such action it was necessary to make the heirs of W. W. Smith parties.

On February 14, 1859, a petition of revival was filed, Record p. 50, in which the death of W. W. Smith was suggested and in which the State of Louisiana, plaintiff, prays that John W. Smith, *administrator* of W. W. Smith, be cited, and further prays for service *on all other legal representatives.* No service was made on the legal representatives of W. W. Smith, although his heirs were represented in the State, and within the jurisdiction of the State District Court, in which the suit was pending. No appearance was made by the heirs, or in their behalf.

The administrator appeared and assumed to defend the cause without any right or power so to do. In Louisiana, as in all other states, the administrator has no power to defend any but personal actions, except when the succession is a *vacant* succession.

"A succession is called vacant when no one claims "it, or when all the heirs are unknown, or when all "the known heirs to it have renounced it." Civil Code La. Art. 1088

The Code of Practice of Louisiana, Art. 122, provides: "All kinds of actions may be brought "against *vacant* successions by suit against the cura- "tor appointed to administer the succession.

"But if some of the heirs of the deceased are "present or represented in the State, the suit must "be brought against the heirs present or represented "as well as against the curator."

So likewise with successions represented by testamentary executors.

C. P. Art. 123.—"Testamentary executors may "defend all actions brought against the succession "they administer when none of the heirs are present "or represented in the State, but if all the heirs or "any one of them be present or represented in "the State, *none* but *personal* actions can be brought "against the executor alone. All real actions must "be brought both against the executor *and* the heirs "present or represented."

The succession of W. W. Smith was not a vacant succession, on the contrary, the heirs were known, and in the petition of John W. Smith praying to be appointed administrator, the names and residence of the heirs are stated, and counsel was appointed to represent them. Record p. 30.

As stated by Judge *a quo* in bill of exceptions, the undisputed evidence shows that the heirs of W. W. Smith were represented in the State and within the jurisdiction of the Court in which the suit of the State vs. W. W. Smith was pending. Prior to the petition of revival by which the administrator

was attempted to be made a party to that suit, the heirs of W. W. Smith, the plaintiffs below, were represented in the State of Louisiana.

This petition of revival was filed February 14th, 1859. On the 30th November, 1858, R. p. 19-30, one John Brown presented a petition to the State Court for the Parish of Caddo, (the Court in which the suit the State vs. W. W. Smith was pending,) setting forth the heirs of W. W. Smith, that he was guardian of some of them by appointment under the laws of Kentucky, and praying to be recognized and confirmed as such guardian in Louisiana Thereupon said Brown was by said Louisiana Court appointed tutor of said minors, gave bond, took the requisite oath, letters were issued to him, and under authority of the Court he accepted for his wards the succession of W. W. Smith. The heirs of W. W. Smith, including the defendants in error, being represented in the State of Louisiana when the attempt was made to revive the suit of the State vs. W. W. Smith, that suit could not be revived except by making them parties, which was not done. Consequently the proceedings had in that suit after the death of W. W. Smith were and are absolutely without effect as to defendants in error, and the evidence offered in support of the plea of *res judicata* was properly excluded. 34 La. An. 321-2; 40 La. An.,

Succession of Cassidy, 831; 31 La. An. 134; Code Practice 120, 121-123. See also Ingle vs. Jones, 9 Wall 486; 14 Wall 297.

Even though the administrator of W. W. Smith had power to appear and defend the suit of the State vs. W. W. Smith, the judgment therein rendered would not support the plea of *res judicata*, because that suit is still pending on appeal.

Art. 3556 Civil Code of Louisiana, No. 31—Thing Adjudged—declares: "Thing Adjudged is said of "that which has been decided by a final judgment "from which there can be no appeal, either because "the appeal did not lie, or because the time fixed by "law for appealing is elapsed, or because it has been "confirmed on the appeal."

And it is settled by many decisions of the Supreme Court of Louisiana that "a suit pending on appeal "does not form *res judicata*." 9 M. 38; 7 La. 579; 7 A. 600; 14 A. 653.

An appeal was taken by the administrator from the judgment rendered in the suit of the State, returnable to the Supreme Court of Louisiana, at Monroe, on the 2d Monday of July, 1861. During the war, which commenced in April, 1861, nothing was done with the cause. When the war closed, by Act 82, session 1866, the State Legislature made all appeals from a number of parishes, including Cad-

do, cognizable at Natchitoches, an annual term being held for that purpose, commencing on the second Monday of August.

At the August term, 1866, the appeal was pending.—The minutes of the Supreme Court showing that on August 14th, 1866, the cause was *continued.* Record p. 54. Of course that carried the case over to August term, 1867. Meanwhile, before that term arrived, John W. Smith, administrator of W. W. Smith, having filed his final account, which was duly approved and homologated, was by a judgment of the probate court, of date August 3, 1867, *discharged* from the further administration of the succession of W. W. Smith, and his bond was cancelled. Record p. 31.

Consequently, when the Supreme Court convened at Natchitoches, on the second Monday of August, 1867, John W. Smith, administrator, the nominal defendant, being no longer administrator, nothing could be done in the case, and since that time it has remained without a party defendant.

When the administrator is discharged from his trust, he has as such administrator no standing in judgment. 26 A. 222; 20 A. 35; 23 A. 178.

When it is shown that a final account has been filed, homologated, and the administrator discharged, the cause should be continued to make the heirs parties. Jones vs. Britton, 16 A. 321.

At the August term, 1867, of the State Supreme Court, and after the discharge of the administrator, an order was improvidently entered dismissing the appeal in the case of the State vs. W. W. Smith, but that order was a nullity—there being no party defendant or appellant—and the appeal is still pending in the State Supreme Court. Therefore, the judgment rendered in that suit cannot support the plea of *res judicata*, and the evidence offered in support of that plea is immaterial.

But if there had been a judgment in the suit of the State vs. W. W. Smith, confirmed on appeal and final, such judgment could not support the plea of *res judicata* in favor of defendants below.

They were not parties to that suit, none of their assigns were parties thereto, and defendants below do not claim title from the State. Therefore, so far as they are concerned, the judgment in the case of the State vs. Smith is no bar to the action against them. C. C. La. Art. 2286. The authority of the thing adjudged takes place only with respect to what was the object of the judgment. The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be *between the same parties*, and formed by them against each other in the same quality.

In this connection, it is to be observed that the

State of Louisiana has never claimed anything under that void judgment and dismissal of appeal. Her silence and inaction for more than twenty years is a confession that she has no legal claim to the land in dispute. The State received the price and had no interest in the question.

PLEA OF PRESCRIPTION.

Bill of Exceptions No. 2 is to the refusal of Judge *a quo* to give following charges requested by defendants below. Record p.p. 80-81.

1st Request. "Conceding that the United States "did not own the land in controversy, the fact that "the land department of the government thought "the title in the government and that the President "issued a patent for the land, is evidence that the "defect in the government's title was not apparent, "and is a strong circumstance if not conclusive evi- "dence of the good faith of the purchaser, W. D. "Wylie."

With regard to this the Judge *a quo* states: "I "refused the first part of this request, but as to the "latter part, charged that the jury might consider "the circumstance for what it was worth in testing "Wylie's good faith."

The charge requested concedes that the United

States had no title to the land in controversy, but assumes that officers of the government thought otherwise, and therefore concludes that Wylie acquired from the government in good faith. This deduction does not follow. Moreover, if it be true that such officers thought and that Wylie thought that the government had title, such opinion resulted from mistaken view of the law, and for an error of law the Courts cannot give relief.

But the Judge *a quo*, erroneously as we think, permitted the jury to consider the circumstances stated in testing Wylie's good faith, and certainly defendants below cannot complain. The jury considered those circumstances, in connection with the other evidence in the case, and it appears conclusively from their verdict that Wylie was not a purchaser or possessor in good faith.

2d Request. "If the United States did not own "the land conveyed by its patent to W. D. Wylie, "and which is the subject of controversy, the error "on the part of vendor and vendee was an error of "fact, which the law does not consider of such a "nature as to prevent Wylie and his vendees in "possession from pleading prescription of ten "years."

3rd Request. "The good faith of Wylie as pur- "chaser from the government cannot be impugned, "because by careful examination and inquiry he

" could have discovered the nullity of the govern-
" ment's title. Good faith in the possessor is al-
" ways presumed.

4th Request. "If the vendee, Wylie, went into
" possession of the land under a patent from the
" government and had just ground to believe that
" his title was good, though in fact it was a nullity,
" the opinion is equal to a title."

With regard to these requests the Judge *a quo* states:

"I refused the 2nd request because the land in
" question was shown by undisputed evidence to
" have been swamp and overflowed land in 1849,
" and included by law under the grant of 1849 by
" Congress to the State, and further because the
" land described in Wylie's certificate from the land
" office under which he sold to his vendees, Hotch-
" kiss and Tomkies, and which *is recited* in his deed
" to them, shows the land to be within the cor
" porate limits of the City of Shreveport, and was
" in said limits prior to the date of said certificate.
" So far as good faith being under the law presumed
" in Wylie, I charged as requested—3rd request—
" but added that the description of the land in the
" certificate showed the land to be in the city limits,
" and charge him with knowledge of the fact
" and with knowledge of the law which

" forbids the public lands of the United States " lying within a city's limits to be sold to any one " under the homestead or general land laws, and the " presumption of good faith cannot avail him. As " to Wylie, I charged that his title was a nullity, " and under the undisputed facts in relation to the " land lying within the city's limits, and as to its " character being swamp and overflowed land in " 1849 and continuously afterward, and under the " law forbidding public lands to be sold when " lying within a city's limits. and the law of Con- " gress of 1849, donating such swamp and over- " flowed lands to the State. Wylie is charged with " knowledge of such facts and law, and the certi- " ficate given to him cannot be taken as a basis for " the beginning or running in his favor of the pre- " scription of ten years.

"I charged further in regard to testing the good " faith of Wylie's vendees, Hotchkiss and Tomkies, " that they should be charged with such knowl- " edge as is shown to be in the common knowledge " of the men and community of Shreveport, their " place of residence, as to the land being swamp " and overflowed land in 1849 and continuously " thereafter, unless the jury from other evidence in " the case should believe otherwise as to such knowl- " edge in them. That they should be charged with

"knowledge of the fact that the land was in the "city's limits by the description of the land in the "certificate under which Wylie sold, which certifi- "cate was recited in the deed to them, and that they "should be charged with knowledge of the act do- "nating the swamp and overflowed lands, in 1849, "to the State, and of the law forbidding public "lands of the United States lying within a city's "limits to be sold to any one under the homestead "or general land laws.

5th Request. "The presumption is, that buying "from Wylie, who was in possession as owner by "virtue of a patent from the United States, perfect "in form, Hotchkiss and Tomkies were purchasers "in good faith and if they honestly believed Wylie "to be the owner, that is a sufficient foundation on "which to rest the prescription of ten years where- "upon the Court erased the clause, *that is a suffi- "cient foundation on which to,* and inserted, *that is "if they believed Wylie had a title which would have "made him the real owner if the United States owned "and could sell the land, then so far as Hotchkiss "and Tomkies they could prescribe if otherwise in "good faith and in possession of the land.*

With regard to this request, the Judge *a quo* states: "In relation to matters requested in 5th Re- "quest, I charged that if the vendees of Wylie be- "lieved that Wylie had a title translative of pro- "perty, such a title as would have made Wylie the

" real owner if the United States owned the land,
" then the title of Wylie to Hotchkiss and Tomkies
" should (if they were otherwise in good faith and
" in such possession as the law requires of a posses-
" sor in good faith) be considered by the jury as a
" legal basis for the beginning and running of the
" prescription of ten years."

Surely there is nothing in this charge of which the defendants below can with any show of reason complain.

Moreover, this request assumes a condition of things which did not exist. When Hotchkiss and Tomkies purchased from Wylie he was not in possession as owner by virtue of a patent from the United States, perfect in form. They purchased on November 20th, 1872. Wylie then had only a Receiver's receipt. He had no patent until 1874.

Counsel cannot in requests to the Court below assume the existence of facts and ask a charge to the jury based on such assumption. Nor upon argument in this Court insist that because the assumption was made this Court is to consider the assumed facts as existing. N. Y. M. Life Ins. Co. vs. Baker, 4 Otto 610.

In this connection, it is to be observed that all the requests asked for assume the existence of facts not disclosed by the record and not established in lower Court.

6th Request. "Whether the land in controversy

" belonged to the character of lands donated by acts " of Congress of 1849 and 1856 to the State of Lou- " isiana, is a question of fact dependent upon evi- " dence of the character of the land, and does not " prevent the plea of prescription, though it may be " proven to be of such character."

The Judge *a quo* states: "I did not give the 6th " request as a charge, because I believe all of it, " which should be charged was included in what I " said to the jury."

With regard to this bill, we will add only a few words to the clear and convincing statements of the learned Judge *a quo.*

We repeat, it was proved by undisputed evidence and so appears from the verdict of the jury, and from the statements made by Judge *a quo* in bills of exception, that the land in controversy was at the time of the passage of the swamp land grant acts of the character mentioned in said acts, and has ever since continued to be of that character, and that said land was before Wylie attempted to homestead it and has ever since remained within the corporate limits of the City of Shreveport. Such being the facts, the land could not be acquired under the provisions of the Act of May 20, 1862. "To secure homesteads to actual settlers on the public domain," because: 1st. The United States had divested itself of all title to swamp and overflowed lands in Louisiana.

2nd. Because the Act of May 20th, 1862, declares that lands lying within the corporate limits of any town or city are not subject to homestead entry.

Wylie is charged with knowledge of the law. He was at the time of his attempted entry a resident of the City of Shreveport, and is charged with knowledge of its limits. His attempted homestead entry proves that he actually resided on a portion of the land in controversy, therefore he could not be ignorant of the fact that the land was swamp and overflowed land of the character mentioned in the swamp land grants, such character being (as shown by uncontradicted evidence) apparent on the face of the land. It follows that Wylie was not and could not be a possessor in good faith.

His vendees, Hotchkiss and Tomkies, are equally possessors in bad faith.

On October 19th, 1872, Wylie obtained from the Receiver of the Land Office at Natchitoches, a receipt (see R. page 58) purporting to be a receipt in full for lot 15, South of the bayou of section 25, tonwnship 18, range 14, West—the land in controversy. This receipt was recorded in the Conveyance Office of Caddo Parish, November 20th, 1872. *On the same day* Wylie sold to Hotchkiss and Tomkies an undivided two thirds interest in the land described in deed to them "as lot 15 of section 25, township 18, range 14, *according to Receivers' re-*

ceipt No. 17830, *this day filed for record in the Recorder's Office of this Parish.*" (see R. p. 60).

It is certain then that Hotchkiss and Tomkies knew that Wylie had only a Receiver's certificate, and they are charged with knowledge of the law under which said certificate does not vest title, the title remaining in the United States until the issuance of a patent, which in this instance did not issue until 1874.

Hotchkiss and Tomkies knew that Wylie had no title; moreover, they were both residents of Shreveport, charged with knowledge of its corporate limits, both knew from the certificate that it purported to be a commutation of a homestead entry, and from the description of the land, that it was within said corporate limits and therefore not subject to homestead entry. It follows that Hotchkiss and Tomkies were not possessors in good faith, and the plea of prescription cannot avail them or their vendees.

Under the law of Louisiana, to acquire ownership of immovables under the prescription of ten years, four conditions must concur:

1. Good faith on the part of the possessor.
2. A title which shall be legal and sufficient to transfer the property.
3. Possession during the time required by law.
4. An object which may be acquired by prescription. Civil Code La. Art. 3479.

The possessor in good faith is he who has just

reason to believe himself the master of the thing which he possesses. C. C. 3451. The possessor in bad faith is he who possesses as master, but who assumes this quality when he well knows that he has no title to the thing, or that his title is vicious and defective. C. C. 3452.

To be able to acquire by the prescription of ten years, a legal and transferable title of ownership in the possessor is necessary. This is what is called in law a just title. C. C. 3483.

Error of law will not support prescription. 41 La. An. 494.

Wylie and his vendees, Hotchkiss and Tomkies, were not possessors in good faith and were without a just title.

The judgment of Court *a qua* should be affirmed.

Respectfully submitted,

A. H. LEONARD,
LAND & LAND,
Of Counsel for Defendants in Error.